TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 608. 325 50

SUSAN C. KNIGHT, (FORMERLY SUSAN C. MARSHALL,), APPELLANT,

vs.

JAMES W. PAXTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 27, 1884.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of the United States circuit court for the seventh circuit, and the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Tuesday, the twenty-fourth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the one hundred and eighth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

JAMES W. PAXTON
vs.
JAMES M. MARSHALL, since Deceased, and SUSAN C. MARSHALL. } In Chancery. Bill.

And

SUSAN C. MARSHALL
vs.
JAMES W. PAXTON. } Cross-bill.

Be it remembered that on the thirteenth day of May, A. D. 1880, came the complainant, by his solicitors, and filed in the office of the clerk of said court his bond for costs and bill in said entitled cause, which said bond and bill are respectively in the words and figures following, to wit.

2 *Bond for Costs.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court. May Term, A. D. 1880. In Chancery.

JAMES W. PAXTON *vs.* JAMES M. MARSHALL, SUSAN C. MARSHALL.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and, in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this 13th day of May, A. D. 1880.

BOUTELL & WATERMAN.

Endorsed: Filed May 13th, A. D. 1880. W. H. Bradley, clerk.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of the United States circuit court for the seventh circuit, and the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Tuesday, the twenty-fourth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the one hundred and eighth year.

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Dated this 13th day of May, A. D. 1880.

BOUTELL & WATERMAN.

Endorsed: Filed May 13th, A. D. 1880. W. H. Bradley, clerk.

Bill.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

To the judges of the circuit court of the United States for the northern district of Illinois, in chancery sitting:

3 James W. Paxton, of Wheeling, in the State of West Virginia, who is a citizen of the State of West Virginia, brings this his bill of complaint against James M. Marshall and Susan C. Marshall, who are citizens of the State of Illinois and residents of said district.

And thereupon your orator complains and says that on the thirteenth day of February, A. D. 1872, said James M. Marshall, being indebted to your orator in the sum of ten thousand dollars, in consideration thereof executed and delivered to Francis Bradley his bond of that date in the penal sum of twenty thousand dollars, conditioned in effect for the payment to said Francis Bradley, his executors, administrators, or assigns, of the principal sum of ten thousand dollars on the thirteenth day of February, A. D. 1877, with interest thereon, at the rate of nine per cent. per annum, from the date of said bond, payable half yearly, until said principal sum should be fully paid; and also at the time of executing said bond to secure the interest on said bond prior to the maturity thereof the said James M. Marshall executed and delivered to said Francis Bradley ten coupon notes, each for the sum of four hundred and fifty dollars, and each dated the thirteenth day of February, A. D. 1872, and payable to the order of said Francis Bradley, which said bond and coupon notes were thereupon assigned by said Francis Bradley to your orator, who thereby became the legal owner

4 thereof, as he was already the equitable owner thereof, as by said bond and the unpaid coupon note, with the indorsements thereon, now in the possession of your orator, and ready to be produced and proved as your honors shall direct, will more fully and at large appear.

Your orator further shows unto your honors that, to secure the payment of the principal sum and interest mentioned in said bond and coupon notes, the said James M. Marshall and Susan C. Marshall, his wife, on the thirteenth day of February, A. D. 1872, by their deed of trust, in the nature of a mortgage, of that date, conveyed to one Lyman Baird, in fee-simple, the following-described real estate, situate in the city of Chicago, county of Cook, and State of Illinois, to wit:

Beginning at the southeast corner of lot numbered twelve (12), in block numbered three (3), in William Jones' addition to Chicago, and running thence north along the west line of Indiana avenue forty (40) feet; thence west parallel with the north line of said lot twelve (12), which said north line coincides with the south line of lot thirteen (13), in said block three (3), one hundred and fifty-eight (158) feet to an alley; thence south along the east line of said alley forty (40) feet to the south line of said lot twelve (12); thence east along said last-mentioned line one hundred and fifty-eight (158) feet

to the place of beginning. Otherwise described as all of said
5 lot (12) twelve and the south twelve (12) feet three and a half (3½) inches of said lot thirteen (13), according to plat recorded in the recorder's office in said Cook county, in book 133 of maps, page 37.

Together with the appurtenances thereto belonging and all the rents, issues, and profits thereof, and also all rights, both in law and equity, including right of dower and rights under the homestead laws of the State of Illinois, of the said James M. and Susan C. Marshall of, in, and to said real estate.

In trust, nevertheless, for the purpose of securing said principal sum and the interest mentioned in said bond and coupon notes, and subject to a condition of defeasance upon the payment of said principal sum and interest, according to the provisions of said bond and notes, and the performance of the covenants and agreements mentioned in said trust deed.

Which said deed of trust was on the fourteenth day of February, A. D. 1872, duly acknowledged by the said James M. Marshall and Susan C. Marshall, and afterwards, on the fourteenth day of February, A. D. 1872, duly recorded in the recorder's office of said Cook county, in book 56 of Records, page 48.

All of which will more fully and at large appear by reference to said deed of trust and its accompanying certificates of acknowledging and recording now in the possession of your orator and ready to be produced and proved as your honors shall direct, and
6 to which, for greater certainty, your orator prays leave to refer.

And your orator further shows unto your honors that default having been made in the payment of said principal sum of ten thousand dollars, the said Lyman Baird, at the request of your orator, and by virtue of the power of sale contained in said trust deed, did, on the eighth day of March, A. D. 1879, at ten o'clock in the forenoon, at the north door, nearest La Salle street, of the courthouse, on Adams street, in the city of Chicago, Cook county, Illinois, offer for sale to the highest bidder for cash the premises described in said deed of trust, and all the right, title, benefit, and equity of redemption of the grantors in said deed of trust, their heirs and assigns therein, after having first given twenty days' notice of the time and place of such sale by publication in the Inter-Ocean, a newspaper published daily in said city of Chicago in the English language, and did then and there sell the same to your orator for the sum of ten thousand dollars, who was the highest bidder therefor; and afterwards, on said eighth day of March, A. D. 1879, the said Lyman Baird, as such trustee, by deed duly acknowledged, conveyed to your orator in fee-simple said premises and the equity of redemption thereof of the grantors in said trust deed, which said trustee's deed was duly recorded on the first day of April, A. D. 1879, in the recorder's office of said Cook county, in book 896 of Records, on page 53.

7 And your orator further shows unto your honors that immediately after the execution of said trustee's deed he de-

manded possession of said premises of said James M. and Susan C. Marshall, who were, when said trust deed was executed, and ever since have been, in the occupation of the same as a residence, but they refused to deliver up the same to your orator; that nearly a year after making such demand, to wit, on the fifteenth day of March, A. D. 1880, the said James M. Marshall and Susan C. Marshall set up the claim for the first time, so far as your orator is aware; that said Susan C. Marshall had never acknowledged said deed of trust, and that by reason thereof her homestead in said premises had never been released, and that she then had a homestead right in said premises; that this was the first knowledge that your orator ever had of any such claim or pretense, and that your orator always believed that said trust deed was properly acknowledged by said Susan C. Marshall, as well as by the said James M. Marshall, and that in and by said deed they had legally released all their rights in said premises under the homestead laws of the State of Illinois.

Your orator further shows unto your honors that the value of the premises conveyed by said deed of trust is greatly in excess of the value of the homestead rights therein of the said defendants, and that your orator is entitled to the possession of so much of
8 said premises as may not be set off to the defendants for a homestead, or, in case said premises are incapable of division, is entitled to the possession of the whole of said premises upon the payment into court, for the use of said defendants, of the sum of one thousand dollars, which payment your orator is ready and hereby offers to make.

To the end, therefore, that the said defendants may be required to make full and direct answers to this bill, but not under oath, answers under oath being hereby waived, that the value of said premises may be ascertained; that so much of said premises as may be of the value of one thousand dollars may be set off to said defendants for their homestead, and the possession of the residue of said premises delivered to your orator, or, if said premises cannot be divided, that the possession of said premises be delivered to your orator upon his payment into court, for the use of said defendants, the sum of one thousand dollars, and that your orator may have such other and further relief as to your honors shall seem meet and the nature of this case may require:

May it please your honors to grant unto your orator a writ of subpœna, to be directed to the said James M. Marshall and Susan C. Marshall, thereby commanding them and each of them, at a certain day, under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises,
9 and to stand to, perform, and abide by such order and decree therein as to your honors shall seem meet; and your orator will ever pray, &c.

JAMES W. PAXTON,
By BOUTELL & WATERMAN,
His Attorneys.

BOUTELL & WATERMAN,
Solicitors for Complainant.
L. H. BOUTELL,
Solicitor & of Counsel.

Endorsed: Filed May 13, 1880. W. H. Bradley, cl'k.

On the same day, to wit, on the thirteenth day of May, A. D. 1880, there issued out of said clerk's office a writ of subpœna in said entitled cause, which said writ, together with the return of the marshal thereto attached, are in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to James M. Marshall and Susan C. Marshall, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on
10 the first Monday in the month of June next, to answer the bill of complaint of James W. Paxton this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 13th day of May, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the 104th.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

W. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit: Upon James M. Marshall, therein named, on the 13th day of May, A. D. 1880, by personally delivering to him
11 a true copy of the same on the aforesaid day. I also served the same upon the following named defendant, not having been able to find her to serve personally, by leaving a true copy for her at her usual place of abode with an adult person and a member

of her family, to wit, upon Susan C. Marshall, on the 13th day of May, A. D. 1880, with Mrs. A. F. Lunt.

JESSE S. HILDRUP,
U. S. Marshal,
By THOS. WING, *Deputy.*

Special Deputy's Return.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Know all men by these presents that I have appointed, and by these presents do appoint, Thomas Wing my true and lawful deputy to execute the annexed writ—James W. Paxton *vs.* Jas. M. Marshall *et al.*—and to make return of the execution thereof according to law.

JESSE S. HILDRUP, [SEAL.]
U. S. Marshal for the Northern District of Illinois.

I have served the annexed writ, as per return on the back thereof.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Thomas Wing, being duly sworn, deposes and says that he served the annexed writ, as stated in the foregoing return, and that the expense returned by him, in addition to the fees, was actually
12 incurred, and that the same is according to law.

THOS. WING.

Subscribed and sworn to before me this 15 day of May, A. D. 1880.

[SEAL.] P. A. HOYNE,
U. S. Com. N. D. Ill's.

Endorsed: Filed May 19th, A. D. 1880. W. H. Bradley, clerk.

Afterwards, to wit, on the seventh day of June, A. D. 1880, came the defendants by their solicitors and filed in said clerk's office their appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

United States Circuit Court, Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Compl't, } Bill.
vs.
JAMES M. MARSHALL and SUSAN C. MARSHALL, Defendants. }

We do hereby enter the appearance of each of said defendants in the above-entitled cause, June 7, 1880.

JAMES M. MARSHALL,
By PADDOCK & IDE,
His Solicitors.
13 SUSAN C. MARSHALL,
By PADDOCK & IDE,
Her Solicitors.

Endorsed: Filed June 7, 1880. W. H. Bradley, cl'k.

Afterwards, to wit, on the first day of July, A. D. 1880, came Susan C. Marshall, by her solicitors, and filed in said clerk's office her answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

United States Circuit Court, Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Compl't,
vs
JAMES M. MARSHALL and SUSAN C. MARSHALL, Defendants. } Bill in Ch'y.

The separate answer of said defendant, Susan C. Marshall, to the bill in said cause.

This respondent, now and at all times saving to herself all benefit of exception or otherwise to the manifold errors and insufficiencies in said bill contained, for answer thereto, or to so much thereof as she is advised it is material or necessary to answer, answer-
14 ing, says that she has no personal knowledge as to the indebtedness of ten thousand dollars of said defendant, James M. Marshall, to said complainant, or of the execution to said Francis Bradley of the supposed bond of ten thousand dollars in said bill mentioned, and, therefore, calls for proof of such facts, if deemed material; and respondent says that if it be true that such indebtedness was incurred by said James M. Marshall the same was incurred, and said bond and said ten coupons executed, without respondent's authority or consent and for the sole uses and purposes of said James, or some person other than this respondent, and on information and belief respondent says that said bond and coupons were taken and said loan made by complainant, or by said Bradley as the agent of said complainant, and not on his own behalf, in part, or as to $5,000.00, in renewal of an old debt, and that if said complainant made any advance at that time it was not in excess of $5,000.00, and that said complainant had notice of all the facts herein to be stated relating to this respondent's defence to the bill herein at the time he became indorsee of said principal bond and coupons, as stated in said bill, and is not, as to respondent, a *bona fide* holder thereof, nor has she any personal knowledge as to the alleged foreclosure of said deed of trust to said Baird, though she has recently heard and been informed that said Baird has made a deed to said complainant in manner as stated in said bill, but re-
15 spondent denies that such deed has any binding force as to respondent or is other than a cloud on her title to the land therein mentioned.

And respondent, further answering, says that the land in said bill mentioned was, prior to the intermarriage of respondent and said James M. Marshall, to wit, on the 21st day of November, 1860, and in consideration of such marriage then about to take place, conveyed by said James M. Marshall (who then was seized in fee there-

of) to one Thomas E. Marshall, his heirs and assigns, forever, in trust that said grantee should and would, from time to time, let and demise the said premises, and recover and receive the rents and income thereof, and pay over the same as and when received into the hands of respondent (therein named as Susan C. Larmon), or to such other person or persons as she in writing, under her hand, from time to time might authorize, appoint, and empower to receive the same, or, at her option, to permit and suffer her to occupy and enjoy the same, or to let and demise the said premises, or any part thereof, and to take and receive the rents and income thereof during all the term of her natural life for her own separate use and support, and so that the same should not be in the power or liable to the debts, control, or engagements of any future husband of respondent, she paying all taxes and assessments thereon, and all proper and necessary repairs thereof, and upon the receipt of such rents and in-
16 come to make, execute, and deliver, in her own name, any and all necessary and proper receipts and acquittances therefor; and upon the further trust that in case respondent left her surviving any child or children of said marriage said trustee should hold said premises in trust for such child or children until he, she, or they, and each of them should attain the age of 21 years, or until the survivor should attain such age; then, by a good and sufficient deed of conveyance, to convey said premises to said child or children, and the issue of such child or children as might then be deceased, as tenants in common, in such manner that such issue should take equally among them such shares of said premises as his, her, or their parents would have taken if alive, and in case respondent should not leave such child or children, or issue of such child or children, of such marriage, then to hold said premises in trust for the use of one Susan E. Marshall for her natural life, in case she should survive respondent, and in case respondent should die without such issue by said marriage and said Susan E. Marshall should not survive respondent then to hold said premises in trust for Ophelia K. Larmon for her natural life in case she should survive respondent and said Susan E. Marshall, and in case of — death of respondent without such issue of said marriage, and of said Susan E. Marshall and Ophelia K. Larmon, then immediately thereafter
17 said trustee to convey said premises to said James M. Marshall, his heirs or assigns, in which deed said trustee joined by way of accepting such trusts, and also in such deed covenanted with said grantor, and with all and every person above named interested, or to be interested, as aforesaid, and each of them, faithfully to perform and fulfill said trusts, which deed, duly subscribed by said grantor and grantee, bore date on the day aforesaid, and was duly recorded in the office of the recorder of deeds of said county on the day of its date, in book 206, at page 365, as on reference thereto will more fully appear.

And respondent further says that said intended marriage took place between respondent and said James M. Marshall on the — day of November, 1860, at said Chicago, and that afterwards there were born of said marriage issue as follows: James M. Marshall, Jr.,

Laura Marshall (now Laura Lunt), Bertha Marshall, Philip Marshall, [and] Irvin Marshall, all of whom are now living and entitled in law and equity to a remainder in fee under the trusts aforesaid, upon the decease of this respondent, and that so far as her said children and respondent are concerned neither she nor they have in any wise released or forfeited the trusts and benefits created by said deed of trust, the said deed as to them being, as respondent is advised, in full force and virtue, and respondent shows that said deed was duly recorded in said Cook county, under the recording
18 acts of said State of Illinois as aforesaid, and moreover that, as she is informed & believes and avers, said Baird & Bradley and said complainant had actual notice of its purpose and contents aforesaid at and before the date of the said bond of said James M. Marshall to said Bradley and the signature by respondent of the deed of trust to said Baird.

And respondent shows that at the time of said marriage it was the purpose of said James M. Marshall and respondent that said lands should be and remain to the sole and separate use of respondent, and that it was thereafter occupied, and has [been] ever since and is still occupied, as the homestead of respondent and her family, and that it *has* understood and agreed by and between respondent and her said husband that the same should be kept free from the risk of the business of her said husband, that of a real estate dealer and agent, and in no wise conveyed or incumbered by her and her husband, or by either of them, of all which said complainant had notice, as your orator is informed and believes, and that said deed of trust to said Thomas E. Marshall was made in contemplation of such marriage and of such separate use, and that respondent was then, and often since has been, advised by counsel that the legal effect of said last-named deed was to deprive respondent and her husband of all power of disposition or incumbrance over said land to secure the creditors of said husband, and she therefore
19 submits to the court that such was and is the legal effect thereof, and ask- the construction of this court thereof; and, further answering, she says that not until recently, and after the date of the trustee's sale to complainant in said bill mentioned, was respondent aware that it was claimed by complainant that respondent had in fact subscribed her name to the deed of trust to Lyman Baird in said bill mentioned, and thereby had conveyed her aforesaid homestead as a surety for said debt of said James M. Marshall.

And respondent says at the time of the date of said trust deed to said Baird, and for some years previous, said Baird and Bradley were and had been engaged at Chicago in the business of loaning money for capitalists upon real estate security, and as such loan agents represented among others the complainant in this case; and respondent says that her said husband was, during the same period, actively engaged in his aforesaid business, and making frequent sales and incumbrances of real estate on his own behalf and for various parties for whom he was acting as agent, in the course whereof respondent was occasionally called upon to sign deeds, always, however, supposing them to relate to other lands than those mentioned

in said bill, and always supposing such signatures to be waivers of dower only, or, at least, to have no reference to said homestead land, and that said Baird & Bradley at all these times well knew the tenor & effect of said marriage settlement deed.

20 And, further answering, respondent denies that she ever made any acknowledgment of the deed of trust in said bill mentioned, or that she ever ratified the said deed, and denies that she or said James M. Marshall ever waived such homestead right in the land therein mentioned, and denies that she ever executed or intended to execute said deed of trust to said Baird, and she avers that the same is null and void as to her, and that she is entitled to and hereby claims the land therein mentioned free from said deed or the supposed lien thereof, and she denies that she ever subscribed said deed save under the circumstances herein to be stated and set forth—of all which circumstances complainant, as your respondent is informed and believes, then & there had notice.

And respondent, further answering, says that she is informed & believes, and so avers, that said deed of trust to Lyman Baird was sent by said complainant, through his agents, to the residence of respondent aforesaid for respondent's signature on the 14th day of February, A. D. 1872; that in pursuance of authority from the said complainant, and with his knowledge and approval, and without the knowledge or consent of respondent, the agents of said complainant caused the said deed to be prepared and presented to respondent for her signature on said day; that at that time respondent was confined to her bed by sickness, and by reason of such sickness and the effect of narcotics prescribed by her physicians to relieve the pain thereof

21 respondent was not of sufficient mental capacity to read or understand the said deed if the same had been read to her; that said deed, as respondent has since learned by inspection, was so long and prolix and framed in such technical language that in respondent's aforesaid mental and physical condition it was not possible for her to comprehend the effect and meaning of said instrument; that on being informed by said James M. Marshall (to whom, as she believes, and on information and belief avers) the same was intrusted by the aforesaid agents of complainant, under and in pursuance of their authority from complainant, for the purpose of obtaining the signature of respondent thereto, that said deed related to a lot on Prairie avenue in which respondent and husband were interested, other and different from said homestead lot on said Indiana avenue, and having no reason to disbelieve, but relying upon and believing the same, and having no knowledge or information to the contrary, and no knowledge or information concerning any pending dealing relating to said homestead, your respondent, at the solicitation of said James M. Marshall, unwittingly subscribed her name to the said instrument, but she says that had she known or been informed that said instrument related to her said homestead she would on no account have signed the same; and respondent says that she never gave said James M. Marshall any authority to alienate or incumber, or agree to alienate or in-

22 cumber, said homestead land, or to execute or agree to exe-

cute on her behalf the said deed of trust, and that whatever he did in respect to procuring respondent's said signature he so did in pursuance of some authority or direction from the agents of complainant as aforesaid, as respondent is informed and believes and so states, and so respondent says that said deed of trust to said Lyman Baird is not her act and deed; that it is wrong and inequitable to hold her bound thereby in favor of said complainant as the grantee of said Baird, his agent in said transaction; that said Baird was, under the circumstances, as also complainant, put upon inquiry to ascertain whether in fact respondent had executed said deed and was bound thereby, and that said complainant had notice or the means of notice of the facts aforesaid.

And she further says that inasmuch as the indebtedness in said deed to Baird secured or purporting to be secured was that of said James M. Marshall, the obligor in said bond, as aforestated, the said deed of trust, if binding in any wise upon respondent (which she does not admit), was in no otherwise binding upon respondent than as a mere surety for her said husband, and if bound as such surety respondent submits to the court that the acts and conduct of said complainant herein set forth would operate and have operated in law to exonerate and discharge her from all liability under said deed of trust.

23 And, further answering, she says that said complainant and said Baird & Bradley caused it to be represented to respondent by the recitals of said deed and otherwise that the said Bradley was making said loan in person to the full amount of ten thousand dollars on the day of the date of said deed and bond, whereas, as respondent is informed & believes, and so avers, said Baird & Bradley were acting for said complainant in loaning said moneys, and instead of loaning to said James M. Marshall the full sum of ten thousand dollars loaned only a part of said sum at that time, and out of such part kept and retained for their own use as commissions a considerable sum, to wit, 250.00, which never was received by said James M. Marshall in fact, all which representations operated as a fraud on respondent.

And, further answering, she says that one of the interest notes in said deed of trust mentioned, to wit, the one falling due on the 13 day of August, 1876, having fallen due on that day, said complainant, being then the holder thereof, then and at said city of Chicago, in consideration of interest thereon to accrue from that time to the first day of January, 1877, at a certain raie of interest, to wit, at the rate of nine per cent. per annum, to be paid to him by said James M. Marshall, agreed with said Marshall to extend the time of paying said interest-note from the date of said agreement to the day last named, all which understanding and agreement between

24 said Marshall and complainant was without consent of this respondent, and operated to change without her consent the effect of said bond and the condition thereunder written, which was for the payment on the day and without grace of said interest coupon and the moneys therein mentioned.

And, further answering, she says that the moneys secured by said

bond were in fact the moneys of said complainant and not those of said Bradley; that said James M. Marshall obtained such funds as were loaned him by application to said complainant through said Baird & Bradley, the agents of said complainant, of all which said complainant had notice at and before the date of said bond, and all which facts were suppressed and concealed from respondent by the aforesaid misrepresentations and recitals on said deed of trust.

And she, further answering, says that said principal bond for the payment of said sum of ten thousand dollars fell due by its terms on the 13th day of February, A. D. 1877, and that on or about said day, said bond being so due, it was agreed by and between said James M. Marshall and said complainant, for a valuable consideration, that said complainant would extend and give day of payment of all said principal sum of money, to wit, ten thousand dollars, to said Marshall for the space of six months from that time, in consideration of which said Marshall, on his part, paid, or agreed to pay, said complain-
25 ant interest upon said sum so foreborne at and after the rate of eight per cent. per annum, which was a different rate from that, to wit, nine per cent., in said bond reserved and agreed upon; and your respondent shows that said contract of extension and forbearance was a very material change of said original contract, and was so made by the said parties without the knowledge or consent of respondent; and on information and belief she further says that at other times and for other valuable considerations in money by said James M. Marshall to him then and there paid said complainant made other agreements with said Marshall, whereby he gave other and further extensions of the time of paying said bonds and coupons, and whereby he suspended for various certain times the right of said complainant to sue on said bond and coupons; that all of said last-named suspensive agreements were likewise had and made without the consent or knowledge of respondent, and, together with the others above set forth, operated as a fraud upon respondent in respect to her rights as a surety in case she was in law bound under said deed, which she does not admit, but submits, with all other questions herein, to the judgment of this court.

And as to the allegation in said bill that said deed of trust to said Baird was duly acknowledged by said James M. Marshall and
26 himself, respondent believes that the same was acknowledged by said James M. Marshall, but she denies that respondent ever acknowledged the same, and she says that the certificate in said deed which has recently been shown her purporting to evidence such acknowledgment by her is, as to her, wholly untrue and unauthorized by her.

And your respondent shows that said complainant recently, to wit, on or about the 25 day of April, 1879, brought a suit in forcible detainer against respondent with her said husband, making the statutory form of complaint in use in this court on the law side in such cases, in which cause respondent, with her husband, was served with process; that afterwards, and on the — day of March, 1880, a trial by jury was had in such cause, which was the first opportunity respondent had to claim her rights in any court and deny the effect

and purport as to her of said Baird deed and the validity of the pretended certificate of acknowledgment thereon endorsed; that on said trial respondent introduced evidence tending to show, and, as respondent believes, satisfied said jury, that said deed was not the act and deed of respondent; that respondent had not knowingly signed the same, but had signed the same under the representations aforesaid, and that said certificate of acknowledgment was untrue and void; that said jury in said cause returned a verdict in favor of the defendants in said cause [of] not guilty, which, at
the suggestion of the court, was modified and entered as
27 a verdict of guilty as to respondent's husband and not
guilty as to this respondent, and which verdict was afterwards, as respondent believes, vacated by said court, not because of any error of said jury in so finding, but in order to give said complainant a second trial in analogy to actions of ejectment; and respondent, on information and belief, says that said complainant has taken the benefit of said order of vacation; that said case at law is still pending in said court, and respondent and her said husband harassed at the same time with the present suit, which double proceeding, she submits, is unequitable and improper, and that the present cause should be dismissed for that reason, or at least stayed until the determination of said detainer suit; and she says that the commencement of said detainer proceedings was the first intimation that respondent had of any claim of complainant adverse to respondent's aforesaid interests in said homestead up to that time, said complainant and said James M. Marshall having omitted to inform respondent of the real nature of said deed to said Baird, and respondent up to that time having been ignorant in that behalf, and is informed and so states that said notary, John G. Shortall, Esq., who is a resident of said district and within the jurisdiction of this court, is a proper and necessary party to the present bill as being
the person chiefly responsible for the action of complainant in
28 accepting said bond and giving credit thereto, if, as stated in
said bill, said complainant always (or ever) believed the said Baird deed of trust, upon faith of said notary's certificate, to have been properly or in any wise acknowledged by respondent, as set forth in said certificate, which certificate, as respondent is informed and believes, was given by said notary as a mere matter of accom--odation and friendship to said James M. Marshall; from all which matters and the other proofs in this cause it will appear that your respondent is not in equity bound as having executed said deed, or, if ever so bound, which she does not admit, she has long since been exonerated and discharged by the aforesaid conduct of said complainant; and having fully answered herein she prays to be hence discharged with her costs, &c.

SUSAN C. MARSHALL.

PADDOCK & IDE,
Sol'rs & of Counsel.

Endorsed: Filed July 1, '80. W. H. Bradley, cl'k.

Afterwards, to wit, on the seventh day of July, A. D. 1880, came the complainant, by his solicitors, and filed in said clerk's office his replication to the answer of Susan C. Marshall in said entitled cause, which said replication is in the words and figures following, to wit:

29 *Replication.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

United States Circuit Court, Northern District of Illinois. July Term, A. D. 1880. Chancery.

JAMES W. PAXTON *vs.* SUSAN C. MARSHALL.

The replication of James W. Paxton, complainant, to the answer of Susan C. Marshall, defendant.

This repliant, saving and reserving unto himself all advantage of exception to the manifold errors and insufficiencies of said answer for replication thereto says that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered by said defendant, and that the answer of said defendant is untrue, uncertain, and insufficient in law to be replied unto by this repliant, without this that any other matter or thing in said answer contained, material or effectual in law to be replied to, confessed and avoided, traversed or denied, is true, all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

BOUTELL & WATERMAN,
Complainant's Solicitors.

Endorsed: Filed July 7th, 1880. Wm. H. Bradley, clerk.

30 Afterwards, to wit, on the tenth day of July, in the July term of said court, A. D. 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES W. PAXTON
vs.
JAMES M. MARSHALL *et al.* } In Chancery.

On motion it is ordered by the court that this cause be, and hereby is, referred to Henry W. Bishop, Esq., a master in chancery of this court, to take testimony and report, and that the deposition of James M. Marshall already taken be also considered by said master, and that he report also as to the value of the mortgaged estate, and that the time for taking testimony be extended to November first, A. D. 1880, and that said defendant, Susan C. Marshall, have leave to file a cross-bill herein within twenty days from this date.

And thereupon the death of the defendant, James M. Marshall, is suggested herein.

And afterwards, to wit, on the twenty-sixth day of July, A. D. 1880, came Susan C. Marshall, by her solicitors, and filed in said clerk's office her cross-bill in said entitled cause, which said cross-bill is in the words and figures following, to wit:

31 *Cross-Bill.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the Circuit Court of the United States. In Chancery.

The cross-bill of Susan C. Marshall, exhibited in a certain cause pending in said court, wherein one James W. Paxton is complainant and said Susan is defendant.

To the judges of said court for the seventh circuit and district aforesaid:

Your oratrix, the said Susan C. Marshall, a citizen of the State of Illinois, residing at Chicago, in said district, brings this her cross-bill against said James W. Paxton, a citizen of the State of West Virginia, defendant, and thereupon, and by leave of court had and obtained, complains and says that said Paxton filed his bill in said cause in this court on the 13th day of May last; that on the first day of July instant your oratrix filed her answer herein to said bill, as will appear by the record.

And your oratrix shows that in and by said bill said Paxton seeks the aid of this court to dispossess your oratrix of the homestead of your oratrix upon payment of the sum of one thousand dollars, averring that your oratrix had executed (with her husband) a deed of trust thereof to one Lyman Baird to secure a note or bond of your oratrix'- said husband, bearing date February 13, 1872, in favor of one Bradley, for the payment of ten thousand dollars, and
32 that said deed of trust was afterwards foreclosed by sale of said premises to said Paxton, as will more fully appear in said bill.

And your oratrix shows that on and prior to the date of said deed of trust, which, as appears by said bill, was dated on the 13th day of February, A. D. 1872, the said Baird and Bradley were extensively engaged as partners, at Chicago, in the business of acting as agents for capitalists in lending money upon real estate security; that one of the capitalists for whom they were then and for several years previous had been acting was the said Paxton, and that in the course of such agency, and with the authority of said Paxton, said Baird and Bradley, on or about said February 13, 1872, as your oratrix is informed and believes, and so states, agreed for said Paxton, with said James M. Marshall, to lend said Marshall, of the moneys of their said principal, the sum of $5,000.00, and to extend a previous loan of a like amount for the term of five years from that day, and to take from said Marshall his bond for payment of ten thousand dollars, payable in five years thereafter, to be secured by a trust deed of said homestead property, to be executed by said Marshall and your oratrix, according to the directions and under the

supervision of said Paxton, through his said agents, Baird & Bradley; and your oratrix shows that said loan of $5,000 so to be extended fell due on said 13th day of February, A. D. 1872, and was secured by a certain deed of trust purporting to be signed and acknowledged before a notary by said James M. Marshall
33 and your oratrix, but which, as she is informed, was released by said Baird and Paxton at the instance of said James M. Marshall at or about the time of such extension, which release was without the knowledge or consent of your oratrix, and which deed of trust, although signed by your oratrix, was never acknowledged by her or in any wise binding as her act and deed.

And your oratrix shows that your oratrix was in no wise a party or consenting to said agreement between said Paxton and said James M. Marshall touching said bond and deed of trust for ten thousand dollars, and had no knowledge or information thereof until recently, when she learned of the same through the attempts of said Paxton to oust your oratrix from the premises aforesaid by means of a forcible detainer suit in this court, as set out in her answer herein.

And your oratrix further shows that in compliance with said agreement with said James M. Marshall said Paxton, by his aforesaid agents, prepared a deed of trust and a principal and coupon bonds, bearing date on said February 13, 1872, according to forms in use and prescribed by said Paxton or his agents; that said Paxton, as your oratrix is informed and believes and so avers, then and there, in accordance with the aforesaid agreement, assumed the duty of preparing and taking said securities and employed said James M. Marshall as his agent for the purpose of calling upon your oratrix and obtaining the signature and acknowledgment of your oratrix, at her residence, to said proposed deed of trust as so pre-
34 pared; that as was well known to said Paxton and his said agents, your oratrix had no part in or knowledge of said matter and had not in any wise employed said Baird or Bradley or James M. Marshall in relation thereto, or in relation to the preparation or execution of said deed of trust, and, in fact, was confined at her residence by severe illness, incapacitating her from any business and rendering her unfit and unable to comprehend the meaning of said deed, either by reading or hearing the same read.

And your oratrix shows that at and before said February 12th, 1872, your oratrix, as was well known to said Paxton and his said agents and employees, was and had been entitled to an equitable estate in the premises mentioned in said deed of trust in the manner and upon the trusts and confidences following—that is to say:

That said James M. Marshall, being seized in fee of said premises and about to marry your oratrix, did, in consideration of such marriage and for the purpose, then expressed and agreed between himself and your oratrix, of affording to your oratrix and the children, if any, to be born of such marriage, a permanent support and homestead, to wit, on the 21st day of November, A. D. 1860, convey said premises, by deed bearing date on that day and recorded in the recorder's office of Cook county, Illinois, to one Thomas E. Marshall, as trustee, in trust, among other trusts, from time [to time] to let

and demise said premises and receive and pay over to your oratrix (therein by her maiden name styled Susan C.
35 Larmon) or her appointee the rents and income thereof, or, at the option of your oratrix, to permit her in person to occupy and enjoy the same as a residence and homestead, or to let and demise the said premises or any part thereof, and to take and receive the rents and income thereof during all the term of your oratrix'-natural life for her own separate use and support, and so that the same should not be in the power or liable to the debts, control, or engagements of any future husband of your oratrix, she paying taxes, assessments, and necessary repairs thereof, and on receipt of such rents and income your oratrix to execute in her own name all necessary and proper receipts and acquittances therefor, and such receipts so given by her appointees, notwithstanding coverture, to be good and valid in law for all purposes whatsoever, and in case your oratrix should leave her surviving any child or children by said intended marriage with said James M. Marshall, then said trustee to hold said premises in trust to and for the only proper use and benefit of said child or children until each of them or the survivor or survivors should have attained the age of twenty-one years; then, by a good and sufficient deed of conveyance, to convey the said premises to such child or children or the issue of such child or children as might be then deceased as tenants in common in equal parts among such children, with right of representation to the aforesaid issue, and with other limitations in favor of Susan E.
36 Marshall and Ophelia K. Larmon in case of failure of issue by said marriage, which your oratrix is advised are not at present material, but which with the matters aforesaid will fully appear by said deed ready to be produced, all which trusts were fully accepted by said grantee, Thomas E. Marshall, by his written acceptance and joinder in said deed, as will thereby appear.

And your oratrix, on information and belief, says that afterwards, on or about the 18th May, A. D. 1861, said Thomas E. Marshall made a certain paper purporting to be a deed to your oratrix which bore date on that day and, by some one without the authority or knowledge of your oratrix, was recorded in said Cook county records and purported to convey, as she is advised, the legal title of said premises to your oratrix; but your oratrix shows that she had no knowledge of the execution of said purported deed until recently, and that she never received the same, and that the same never took effect by delivery to your oratrix, and she submits that it was not competent for said Thomas E. Marshall so to surrender said trusts, and that the same are still in force, and she further shows that until recently and since the commencement of the proceedings by said Paxton, under said deed of said Baird to him, your oratrix had continued with her children, born of said marriage, to reside upon said premises as a homestead under the aforesaid deed to said Thomas E. Marshall, wholly unaware of any claim of said Paxton
37 or other adverse claim thereto; that there were six children so born, the first, Laura Marshall, now Laura Lunt, having

been born on the — day of October, 1861, and all being now alive and now members of your oratrix'- family on said premises.

And she shows that shortly after such marriage she and her husband removed to said premises, on which he had, as a gift to her and said children, erected a comfortable frame dwelling and other improvements during such marriage; that such occupancy and improvements were under the trusts aforesaid, and that long before either of said loans of said Paxton to said James M. Marshall your oratrix and such of her children as were then born were in the actual and notorious occupancy of said premises under said trusts; that said Paxton and his agents well knew of such occupancy, and well knew that by said deed to Thomas E. Marshall it was the right of said children, as well as that of your oratrix, that your oratrix should continue her occupancy of said homestead during her life, and that the same was to be held in trust as aforesaid and kept free from any debt or control of said James M. Marshall, and from all power of alienation by your oratrix in favor of said Marshall's creditors or otherwise; and she therefore insists that her said children have an interest in the matter of said Paxton's bill as necessary parties, and should be made defendants to said bill as such

38 And your oratrix shows that on the 14th day of February, A. D. 1872, being confined to her bed by sickness, under the influence to a considerable extent of medicines prescribed by her physicians, and by such sickness and medicines incapacitated as aforesaid from properly understanding any business affair, she was requested by said James M. Marshall, acting as agent as aforesaid for said Paxton, to sign the aforesaid deed of trust to secure said bond of ten thousand dollars so agreed to be made by said Marshall; that, not understanding or having ability to understand the said deed, which was and is complicated and prolix and drawn in technical language, your oratrix, before signing it, inquired as to its nature, and was told by her husband that it related to a piece of land on Prairie avenue (other than said homestead lot), upon which information, and relying thereon, your oratrix signed the deed and dismissed the matter from her mind, and she shows that had she been told the real nature of said deed she would have refused to sign the same.

And your oratrix is informed and believes, and so avers the fact to be, that immediately after your oratrix signed said paper or deed, and before ten o'clock that day, said Paxton, by his said agents, Baird and Bradley, received said deed from said Marshall and disbursed a large part of the said loan of five thousand dollars to him; that at that time said deed, as your oratrix is informed and so states, bore upon it a supposed and pretended certificate of acknowledgment, purporting to show that

39 on that day your oratrix had appeared before the notary making it and made acknowledgment of such deed, whereas in fact your oratrix had remained sick in bed and had made no such crazy acknowledgment of said deed, nor seen said notary, nor had any information touching said loan or said deed of trust, and, on information and belief, she says that from the circumstances afore-

said and others said Paxton had notice that your oratrix in signing said deed was not aware of its nature, and supposed it to relate to said Prairie-avenue property, and had not acknowledged said deed, and would not have signed it had its real nature been stated to her.

Yet your oratrix shows that a default having been made by said James M. Marshall in payment of said indebtedness said deed of trust was, as said Paxton claims and pretends, by said Baird foreclosed and all interest of said James sold, and afterwards a deed made by said Baird to said Paxton, purporting on its face, by virtue of said deed of trust to said Baird, to convey to said Paxton all the aforesaid homestead premises in fee to the sole use and behoof of said Paxton, his heirs and assigns, forever, under which, as your oratrix is informed and believes, and so avers, said Paxton claims a right to oust your oratrix and her said children from said homestead upon payment of the sum of one thousand dollars, but which claim, as your oratrix submits, is inequitable and illegal, inasmuch as neither your oratrix nor her said children are in any manner bound by said deed of trust to said Baird, and inasmuch as all the trusts and limitations in said deed to Thomas E. Marshall expressed are still in force in favor of your oratrix and her children aforesaid.

40

And your oratrix shows that she, at all times during her aforesaid coverture, was under the belief, derived from advice of counsel and friends frequently given to her, as well as from her own understanding of said deed of Noxember 21st, 1860, that said premises were inalienable by your oratrix for any purpose whatever, and that the only power of your oratrix over them was that given in said deed of letting the same from time to time, or, as was done by your oratrix, entering upon and herself occupying them as a homestead for her aforesaid children and family, and she submits to your honor that such is the proper construction of said deeds, and that, therefore, the said deed to said Baird is, so far as your oratrix and her said children are concerned, void and of no effect, and should be so declared in a court of equity.

And your oratrix submits that if said deed to said Baird was not void as to her it was, at all events, the duty of said Paxton and his said agents to see that the proceeds thereof were applied, according to the aforesaid deed of November 21, 1860, to the benefit of your oratrix, which was not done, but said proceeds given to said James M. Marshall, and that in that view it was a great wrong upon your oratrix and her children, for which said Paxton and his agents are responsible to her and them, to apply the said proceeds to the debts and for the benefit of said James M. Marshall without your oratrix'- knowledge or consent, which was done, and afterwards to seek to divest your oratrix and her said children of said property and oust them from said homestead, which is now sought to be done under color of said deed to said Baird.

41

And your oratrix further shows that, inasmuch as it was agreed and understood between said Baird & Bradley and Paxton and said James M. Marshall that the latter was to have, and he did have, the moneys resulting from said transaction, your oratrix, if at all

bound by her aforesaid signature (which she does not admit), was thereby bound merely as surety for said James M. Marshall, and, if so bound, she is advised and submits to the court that, by the acts and doings of said Paxton herein stated, your oratrix is entitled to be released and exonerated from all liability as such surety.

And in that behalf she says that before such signature said Paxton represented to her, by the said deed and its recitals, that said deed to Baird was to secure an existing debt of ten thousand dollars from said Marshall to said Bradley for a loan at that time made, whereas, as she is informed and believes and so avers, said Marshall
42 was not in debt at all to said Bradley at that time, nor was it intended that he should become so, save in form by said bond, to enable said Bradley to indorse the same to said Paxton; that no loan of ten thousand dollars was then actually made, and at that time the only debt to said Paxton was the aforesaid pre-existing $5,000.00 debt, which was, as your oratrix is informed and so avers, agreed to be extended, as merged in said bond for $10,000 as aforesaid, for five years from that date; that said James M. Marshall was then insolvent, and that said Paxton suppressed and concealed from your oratrix the above facts, well known to him, and the fact that it was his intention thereafter to advance on said securities the sum of five thousand dollars only and not the sum of ten thousand dollars, to be used by said principal debtor, said James M. Marshall, for his own business purposes at a future time, it being the understanding and the intention of the parties to said bond, as your oratrix has since and recently learned and so avers, to make advances to said Marshall from time to time thereafter until said sum of $5,000.00 should be expended, which was afterwards done in various items, at various dates, as she is informed and so avers; all which misrepresentations of said Paxton operated as a fraud upon your oratrix, and were known by said Paxton to be untrue when so made, and if the facts had been truly stated your oratrix would not have signed said deed.

And your oratrix is informed and believes, and so alleges, that
43 one of said instalments of interest secured by said bond and deed of trust, to wit, the one falling due August 13, 1876, having, with the coupon or interest note evidencing the same in the sum of $450.00, fall*ing* due on said day, said Paxton being then the holder thereof, said Paxton then, in consideration of the interest to accrue thereon from that day until the first of January, 1877, at the rate of nine per cent. per annum, which the said James M. Marshall then and there undertook and promised to pay him for said time, agreed with said James M. Marshall to extend and give day of payment of said instalment until said first day of January, 1877, and accordingly did so, and, as your oratrix is informed and alleges, was paid said interest for said period, all which agreement and stay was without the knowledge or consent of your oratrix and operated to vary and materially change the terms and conditions of said bond and to defraud your oratrix if ever bound as such surety aforesaid.

And your oratrix further shows, upon information and belief, that

at various other times said Paxton agreed with said James M. Marshall for valuable considerations to said Paxton rendered to make, and did make, other extensions of the times of paying others of said instalments of interest, and for like considerations did make other changes and modifications in the terms and conditions of said bond as to the time and place of payment of the moneys in said bond and coupons mentioned, all without consent or knowledge of your oratrix, and all which were a fraud upon said surety-
44 ship contract or relation, if any there was, by reason of the signature aforesaid.

And she further shows that said principal bond of said James M. Marshall for said sum of ten thousand dollars fell due by its terms on the 13th day of February, A. D. 1877, and that on or about said day, said bond being so due and said Paxton having then a valid and subsisting cause of action thereon against said James M. Marshall, said Paxton agreed with said Marshall for a valuable consideration that he, the said Paxton, would extend and give day of payment as to all said overdue principal sum of ten thousand dollars to said Marshall for a certain space of time then to ensue, to wit, for six months from said time, in accordance with which contract and in consideration of said extension said James M. Marshall agreed with said Paxton to pay him interest on said principal sum for said extended time at a new and different rate from that in said bond specified, to wit, at the rate of eight per cent. per annum, which said contract was carried into effect by the extension aforesaid, and which was a material and important change in the aforesaid terms and conditions of said bond, and all which was without the knowledge or consent of your oratrix, and operated as a fraud upon said contract if your oratrix was bound by her aforesaid signature.

And your oratrix shows that said Paxton has, by proceedings in forcible detainer, recently endeavored to oust her said family
45 from said premises, as is more particularly set forth in her said answer in this cause, and that said Paxton gives out and claims that your oratrix is bound by said pretended deed of trust to said Baird, and by the pretended foreclosure thereof in the bill herein filed by said Paxton, mentioned and relied upon, and that said Paxton, although thus far unsuccessful in said detainer proceedings, has renewed his attempts to harass and injure your oratrix by the bringing of the present suit, and she shows that said deed to Baird and the other proceedings have operated as a serious cloud upon the title of your oratrix and that of her said children, and she shows that if not restrained by injunction of this court she fears that said Paxton will continue his aforesaid attempts to harrass your oratrix and to injure and cloud her said title and that of her children in the premises aforesaid, to wit, lots (12) twelve and (13) thirteen, in block three (3) in William Jones' addition to Chicago, Cook county, and State of Illinois, except a strip $15\frac{5}{12}$ feet wide from the north side of said lot thirteen, being the same mentioned in said Paxton's bill herein.

And your oratrix shows that after an illness of several months the

said James M. Marshall departed this life on the 1st July instant; that in searching for the facts relating to her defense in said cause your oratrix finds herself deprived of the aid and counsel of her said husband, and from the fact, after said husband's death, and also that said Paxton, in all the aforesaid dealings, at all times
46 neglected to apprise your oratrix of the various changes of said contracts, she is not able to state the matters aforesaid as definitely as she otherwise would be, and craves leave hereafter, if need be, to remedy the same by such amendments as she may be advised to make.

And she says that she is informed and believes, and so avers, that at various times during the pendency of said loan papers, to wit, from the year 1867 to the end of the year 1877, there were letters from said James M. Marshall to said Paxton, and also from said Paxton to said Marshall, and also from said Baird and Bradley to said Paxton and to said Marshall relating to said transactions, many of which are in possession of said Paxton or under his control or that of said Baird and Bradley, and that it is needful to her defence in this cause and to the proper trial of the same that she or her counsel be allowed proper and reasonable access to the said letters in possession of said Paxton.

To the end, therefore, that said defendant may, if he can, show why your oratrix should not have the relief herein prayed, and may upon his corporal oath and according to the best of his knowledge, remembrance, and belief full, true, direct, and perfect answer make to the several interrogatories hereinafter numbered and set forth—that is to say:

I. Whether said defendant, James W. Paxton, at and before the date of the deed of trust in controversy purporting to run
47 from James M. Marshall and wife to Lyman Baird, and bearing date February 13th, 1872, was not aware that the premises therein mentioned were occupied by the family of said Marshall as a homestead?

II. Whether or not any more than five thousand dollars was actually advanced by said Paxton to said James M. Marshall at the time of making said deed of February 13th, 1872, and whether or not the remainder of the ten thousand dollars therein mentioned was not made up by an extension of a previous indebtedness of $5,000.00 due said Paxton from said James M. Marshall?

III. Whether or not said defendant Paxton, on the 13th day of February, 1877, or thereabouts, commenced any proceedings at law or in chancery, or under the power of sale in said deed of trust to enforce the said deed? If yea, when were such proceedings commenced, in what courts, and by what attorneys? Who were the parties thereto? What was their nature?

IV. Whether or not said Paxton is still prosecuting, or has yet dismissed, the forcible entry suit above referred to?

V. Whether said Paxton did not write to his agents, Baird and Bradley, at Chicago, during the months of March and April, 1877, certain letters relating to the matter of said deed of trust of February 13th, 1872? If yea, annex said letters or copies thereof to the

answer hereto, together with the letters of said Baird and Bradley to him during the same period.

Your oratrix prays that said James W. Paxton be made a party defendant hereto; that he be required full, true, and perfect
48 answer and discovery to make to all the allegations of the present cross-bill, but not under oath, save as to his answers to the five foregoing specific interrogatories, his oath to his answer as to all matter- herein, save said five specific interrogatories, being hereby waived, and that he be also required to make exhibits of the aforesaid letters, and also to produce the originals in this cause, that upon a final hearing herein a decree be entered to the effect that said deed of trust from said James M. Marshall to said Baird and all right and title of said Paxton thereunder be, as to your oratrix and her said children, declared null and void and removed as a cloud upon said title of your oratrix and her children, and that said Paxton, his heirs and assigns, agents, and attorneys, be forever debarred and enjoined from prosecuting any suit or proceedings against your oratrix or her said children under color of said deed to said Baird, or under color of said title so derived from said Baird's deed to said Paxton; that in the meantime a temporary injunction to that purpose may be entered herein, according to the practice of this honorable court, and that your oratrix may have such further and other relief as unto equity may appertain; and for the above and such other and further relief your oratrix does and will ever pray.

SUSAN C. MARSHALL,
Complainant.

PADDOCK & IDE, *Sol'rs.*
49 GEO. L. PADDOCK, *Of Counsel.*

Endorsed: Filed July 26, 1880. W. H. Bradley, cl'k.

Afterwards, to wit, on the twenty-first day of September, A. D. 1880, came James W. Paxton, by his solicitors, and filed in said clerk's office his answer to the cross-bill of Susan C. Marshall in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

United States Circuit Court. In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

JAMES W. PAXTON *vs.* SUSAN C. MARSHALL.

The answer of the said James W. Paxton to the cross-bill of the said Susan C. Marshall filed in the above case:

The said Paxton, for answer to so much of said cross-bill as he is informed it is material for him to reply to, says that on the 13th day of February, A. D. 1867, he loaned James M. Marshall five thousand dollars, payable in five years thereafter, and took as security therefor a deed of trust from said Susan C. Marshall
50 and said James M. Marshall, her husband, of the premises in question to one Lyman Baird, which said trust deed was duly

signed and acknowledged by said Susan and James; that when said sum became due said James M. Marshall desired to make a loan from said Paxton of ten thousand dollars, to consist of the five thousand dollars already loaned and an additional sum of five thousand dollars, and thereupon, on or about the 13th day of February, A. D. 1872, the said Baird executed a release of said trust deed dated February 13th, 1867, and the said Paxton delivered to said James M. Marshall the additional sum of five thousand dollars, which, with the sum of five thousand dollars already loaned, made the sum of ten thousand dollars owing to said Paxton from said James M. Marshall, and for which said James M. Marshall executed a bond and coupon interest notes, and to secure which the said Susan C. Marshall and James M. Marshall signed, acknowledged, and delivered a trust deed of said premises to said Baird, dated February 13th, A. D. 1872; that the said Susan C. Marshall knew perfectly well what property was conveyed by said trust deed and for what purpose it was conveyed; that the statements in said cross-bill that she supposed said trust deed of February 13th, 1872, conveyed property on Prairie avenue and not the property in question, and that her husband so stated to her, are, as this defendant believes, a mere pretense, gotten up to defraud him of said ten thousand dollars.

51 And this defendant admits that the firm of Baird and Bradley acted as his agents in the above transactions, but denies that the said James M. Marshall acted as his agent in procuring said Susan to sign said trust deeds, or either of them, or for any purpose whatever.

And this defendant avers that if the allegation of said Susan in said cross-bill, in reference to her signing said trust deed of February 13th, 1872, were true, namely, that she was induced to sign it through the false and fraudulent representations of her husband, the said James M. Marshall, then the release of the said trust deed dated February 13th, 1867, was obtained by fraud, and is, consequently, void and of none effect, and said trust deed of February 13th, 1867, is still in full force and effect.

And this defendant denies that when said Susan signed said deed of trust of February 13th, 1872, she was so sick as to be unable to comprehend the meaning of said deed of trust either by reading or hearing the same read.

And this defendant, further answering, denies that on or before February 12th, 1872, he knew of the trust deed from James M. Marshall to Thomas E. Marshall, and denies that the said Susan did not know until recently of the execution of the deed of said premises from said Thomas E. Marshall to herself, and that the same was never delivered to her, and denies that her children have any interest in these proceedings, and denies that from any circumstances he had notice that said Susan, in signing said trust

52 deed of the 13th February, 1872, was not aware of its nature and supposed it to relate to Prairie-avenue property and had not acknowledged it, and would not have signed it had its real nature been stated to her.

But, on the contrary, this defendant avers that he believed, and

had every reason to believe, that said Susan signed said trust deed and acknowledged it, knowing perfectly well what property it conveyed and for what purpose it was given.

And this defendant, further answering, says that the deed referred to in said cross-bill, or a deed from Thomas E. Marshall to said Susan C. Marshall, conveying said premises, and dated May 18th, 1861, was a deed from said Thomas E. Marshall, Susan E. Marshall, and Ophelia K. Larmon, as grantors, to said Susan C. Marshall, as grantee, and conveyed to said Susan C. Marshall the premises in question discharged of the trusts set forth in the deed of trust of said premises from said James M. Marshall to said Thomas E. Marshall; that said deed from said Thomas E. Marshall, Susan E. Marshall, and Ophelia K. Larmon to said Susan C. Marshall was dated May 18th, 1861, was witnessed by said James M. Marshall, was delivered to said Susan C. Marshall on the day of the date thereof, and was recorded in the recorder's office of said Cook county by direction of said Susan C. Marshall on the 21st day of May, A. D. 1861; that said Thomas E. Marshall, by deed dated May 25th, 1861, and recorded in said recorder's office July 14th, 1866,
53 made a further conveyance of said premises to said Susan C. Marshall for the purpose of correcting a supposed informality in said deed of May 18th, 1861, which said deed of May 25th, 1861, was delivered to said Susan C. Marshall on the day of the date thereof.

And this defendant, further answering, denies that he agreed with said James M. Marshall to extend the time of the payment of the interest coupon secured by said trust deed falling due August 13th, 1876, to January 1st, 1877, in consideration of the payment of interest thereon at the rate of nine per cent. per annum, or for any other consideration, and denies that at various times he, said Paxton, agreed with said James M. Marshall, for valuable considerations to said Paxton rendered, to make, and did make, other extensions of the times of paying others of said instalments of interest, and for like considerations did make other changes and modifications in the terms and conditions of said bond as to the time and place of payment of the moneys in said bond and coupon notes mentioned without consent and knowledge of said Susan.

And this defendant, further answering, denies that when said bond for ten thousand dollars fell due he agreed with said James M. Marshall, for a valuable consideration, that he would extend the time of payment thereof for six months or for any other time, and this defendant avers that he never agreed with said James M. Marshall to extend the time of the payment of said principal sum of
54 ten thousand dollars on any consideration whatever.

And in answer to the interrogatories in said cross-bill contained the defendant says:

1st. As to the first interrogatory this defendant says that at and before the date of the deed of trust in controversy, dated February 13th, 1872, he did know that the premises therein mentioned were occupied by the family of said James M. Marshall as a homestead.

2d. As to the second interrogatory this defendant says that the

consideration of the trust deed, dated February 13th, 1872, was the sum of five thousand dollars then advanced by said Paxton to said James M. Marshall and the sum of five thousand dollars advanced by said Paxton to said James M. Marshall on February 13th, 1867. The time of payment of the bond of February 13th, 1867, for five thousand dollars, secured by trust deed of the premises of that date, was never extended, but was given up and a release made of the trust deed given to secure the same on the receipt from James M. Marshall of the ten-thousand-dollar bond of February 13th, 1872, and the trust deed of said premises given to secure the same on the representation of said James M. Marshall that the trust deed last named, of February 13th, 1872, was duly executed and acknowledged by the said James M. Marshall and Susan C. Marshall and was a valid and subsisting lien on said premises.

3rd. As to the third interrogatory this defendant says that on the 13th day of February, A. D. 1877, or thereabouts, he did not
55 commence any proceedings at law or in chancery, or under the power of sale in said deed of trust, to enforce said deed.

4th. As to the fourth interrogatory this defendant says that the forcible entry suit referred to is still on the common-law docket of this court.

5th. As to the fifth interrogatory this defendant says that the annexed are copies of all the letters relating to the matter of the deed of trust of February 13th, 1872, which this defendant wrote to or received from said Baird and Bradley during the months of March and April, 1877.

J. W. PAXTON.

BOUTELL & WATERMAN,
Solicitors for J. W. Paxton.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

James W. Paxton, being duly sworn, says that he is the defendant in the above cross-bill; that he has read the foregoing answer, and that the matters and things contained in the last five paragraphs of said answer, numbered one to five, inclusive, being answers to the interrogatories in said cross-bill, are true.

J. W. PAXTON.

Subscribed and sworn to before me this 21st day of September, A. D. 1880.

[SEAL.] LUTHER D. BRADLEY,
Notary Public.

L. H. BOUTELL,
Of Counsel for J. W. Paxton.

56 *Extract of Letter of J. W. Paxton.*

WHEELING, *March 8th*, 1877.

Mess. Baird & Bradley.

GENTS: In reply to James M. Marshall I wrote him about the 1st

Feb'y that I would continue $8,000 upon his house at 9 pr. ct., and if he accepted to remit me $2,000 and the six months' interest due Feb'y 13th. If he declined I required payment of the loan at its maturity, 13th Feb'y last. Have heard nothing from him since. Please see him and let me know his conclusions.

I will not continue the present loan of $10,000 without additional security, and shall proceed to foreclose unless the matter is promptly arranged.

Extract of Letter of Baird & Bradley.

CHICAGO, *March 10th*, 1877.

Jas. W. Paxton, Wheeling, W. Va.

DEAR SIR: We note your remarks with reference to J. M. Marshall's loan and will notify Mr. Marshall at once.

Extract of Letter of J. W. Paxton.

WHEELING, *March 20th*, 1877.

Mess. Baird & Bradley.

GENTS: "Please hurry up Mr. Marshall."

57 *Extract of Letter of Baird & Bradley.*

CHICAGO, *24th March*, 1877.

J. W. Paxton, Esq., Wheeling, W. Va.

DEAR SIR: We have been after Mr. Marshall, and he writes us he has also been to see us, and confirms the subject-matter of his letter, which we enclose herewith.

We really do not suppose he can pay anything on the principal. He finds it difficult, as you know, to pay the interest. Our candid opinion is that, if you do not feel disposed to give him time, the only alternative is to foreclose and take the property.

Copy.

CHICAGO, 31*st March*, 1877.

J. W. Paxton, Esq'r, Wheeling, W. Virginia.

DEAR SIR: Your favor of the 28th instant is received with —. We will communicate with the parties at once your *ultimatum*.

Yours resp'y, BAIRD & BRADLEY.

Copy.

CHICAGO, *March 23d*, 1877.

Mess. Baird & Bradley (agents for J. W. Paxton, Esq., of Wheeling, [West] Va., at Chicago).

58 DEAR SIRS: In a further reply to Mr. P.'- two (2) letters of Dec. 26, '76, & of Feb. 1st, '77, my last reply was of Feb'y 4, '77, [to] which I have no reply from said Paxton only through your house. Now I cannot pay my interest which is unpaid for the late dues of same at present; but I must beg of you or the holder of my note that I must at present beg a renewal of five (5) years longer at

7 per c. & I will pay the back interest just as soon as I can. Times are hard and I have a wife and six (6) children to take care of. I have always paid my interest heretofore except what is now due. I wish you to look at this case & give it due & careful consideration & hoping to hear soon from you.

You have $15,000 insurance, & the premises are good. I cannot pay any of the principal now.

Yours truly, J. M. MARSHALL.

Extract of Letter of J. W. Paxton.

M'CH 28TH, 1877.

To Baird & Bradley.

Yours 24th inst., with Mr. Marshall's letter, received.

It is useless for him to talk of renewing at a less rate of interest till he pays that now due. If he will do that and pay six months in advance at 8 pr. ct., I will permit the loan to run at that rate of interest, provided taxes and insurance are kept up; otherwise I must proceed to foreclose. I could scarcely be expected to
59 allow the debt to accumulate. You may communicate this to Mr. Marshall as my *ultimatum*, requiring prompt action on his part.

Extract of Letter of Baird & Bradley.

CHICAGO, *April* 2, 1877.

James W. Paxton, Wheeling, West Virginia.

DEAR SIR: Mr. Marshall is trying to get a loan @ 7% and pay up. We shall be surprised if he can do so, but he thinks he can.

Extract of Letter of J. W. Paxton.

WHEELING, *Ap'l 6th*, 1877.

Mess. Baird & Bradley.

GENTS: I hope Mr. Marshall may succeed in securing a loan to pay off mine, but I want him to understand that either that or payment of back interest and six months in advance at eight per ct. must be done during this month.

Copy.

WHEELING, *April 28th*, 1877.

Mess. Baird & Bradley.

GENTS: Please find herewith James M. Marshall's bond, due 13th Feb'y last, for $10,000, and also six months' interest coupon,
60 due at same, for $450, also trust deed securing same. Please notify Mr. Marshall at once that you have received them, and if he does not promptly pay up back interest, and also interest for the current six months at 8 per ct., proceed to sell with the least possible delay, keeping me advised of the situation and especially of the day of sale as soon as determined.

Very resp'y, (Signed) J. W. PAXTON.

Endorsed: Filed Sept. 21, 1880. Wm. H. Bradley, clerk.

Afterwards, to wit, on the second day of October, A. D. 1880, came Susan C. Marshall, by her solicitors, and filed in said clerk's office her replication to the answer of James W. Paxton in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court of the United States for N. Dist. of Illinois of the October Term, A. D. 1880. In Chancery.

JAMES W. PAXTON *vs.* SUSAN C. MARSHALL. } Bill.

SUSAN C. MARSHALL *vs.* JAMES W. PAXTON. } Cross-bill.

61 The replication of Susan C. Marshall, complainant in cross-bill, to the answer of James W. Paxton, defendant in cross-bill.

This repliant, saying and reserving to herself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant to said cross-bill, for replication thereunto saith that she does and will aver, maintain, and prove said cross-bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by her said cross-bill she has already prayed.

PADDOCK AND IDE,
Solicitors for Complainant in Cross-Bill.

Endorsed: Filed Oct. 2, 1880. Wm. H. Bradley, clerk.

62 Afterwards, to wit, on the fourth day of October, in the adjourned October term of said court, A. D. 1880, in the record of the proceedings thereof in said entitled cause before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

JAMES W. PAXTON. }
vs. } In Chancery.
SUSAN C. MARSHALL. }

On this day comes said defendant, by her aforesaid counsel, and moves the court that this cause, upon the cross-bill of said defendant, be referred to Henry W. Bishop, Esq., master in chancery of this court, to take proof and make report to this court touching the matters in said cross-bill alleged, and that said master make such report at the same time he make report upon the matters in said bill contained under the order heretofore entered in this cause.

Afterwards, to wit, on the third day of May, 1882, came Henry W. Bishop, one of the masters in chancery, and filed in said clerk's office his report in said entitled cause, which said report is in the words and figures following, to wit:

63 *Master's Report.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON
v. } Bill.
JAMES M. MARSHALL and SUSAN C. MARSHALL

And

SUSAN C. MARSHALL }
v. } Cross-bill.
JAMES W. PAXTON. }

To the honorable the judges of the said court:

Upon a hearing of this cause of the matter of the bill and cross-bill referred to me I have been attended by the solicitors of the respective parties, who have submitted to me the testimony taken therein and have presented at length their own views upon the law and the facts in the case, upon a careful consideration of which I find and report that the allegations of the bill are fully sustained by the proofs; that the deed dated February 13th, 1872, purporting to have been signed by James M. Marshall and Susan C. Marshall, his wife, was in fact executed, acknowledged, and delivered as in
64 said bill charged, and is a valid and subsisting lien upon the interest of said Susan C. Marshall in the premises therein described.

I therefore recommend that the prayer of complainant's bill be granted, and that the defendant, Susan C. Marshall, be decreed to deliver to the said complainant the possession of said premises.

I herewith return the testimony taken & produced before me, and also the exhibits therewith produced.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

(Endorsed:) Filed May 3, 1882. W. H. Bradley, cl'k.

Afterwards, to wit, on the fifteenth day of May, came Susan C. Marshall, by her solicitors, and filed in said clerk's office her exceptions to the master's report in said entitled cause, which said exceptions are in the words and figures following, to wit:

65 *Exceptions to Master's Report.*

In the United States Circuit Court, Northern District of Illinois.
In Chancery.

JAMES W. PAXTON
vs.
SUSAN C. MARSHALL *et al.* } Bill.

SUSAN C. MARSHALL
vs.
JAMES W. PAXTON. } Cross-bill.

Exceptions of the said Susan C. Marshall, the defendant in said cause, to the report of the master filed in said cause May 3d, 1882.

1. The said defendant excepts to said report, for that said master reports that the material allegations of said Paxton's bill have been when they have not been proved in the evidence in said report referred to and thereto attached.

2. And for that said master in said report reports that the deed of trust to said Lyman Baird, mentioned in said report, was in fact executed and acknowledged by said Susan C. Marshall and James M. Marshall, when such fact is not alleged in said bill, and
66 is denied in the answer and cross-bill of Susan C. Marshall, and is not proven in said evidence, but is wholly disproved therein.

3. For that, having found in his said report that the above-named deed of trust was so executed and acknowledged by the said James M. Marshall and wife and was a valid and legal conveyance according to its purport and the purport of the certificate of acknowledgment thereto attached, the said master has erred in his said report in recommending to this court that the legal remedy of said Paxton under his said deed be enforced in this cause by a decree ejecting said grantor, Susan C. Marshall, from the lands in said deed mentioned, and has further erred in not recommending the dismissal of said Paxton's bill in accordance with the rules of this court and the act of Congress in such case provided, for want of jurisdiction in this court to hear the same, as it ought to be on the facts reported by him if the same be true.

4. For that said master has omitted to make any report as to the facts or law relating to said Susan C. Marshall's cross-bill and the evidence sustaining the same, although the said matters were
67 referred to him by this court, and are necessary to the proper hearing of this cause, and especially for that said master has omitted to report whether or not it is true, as alleged in said cross-bill, that said Susan C. Marshall was not a party to the loan negotiation in said cross-bill mentioned and was ignorant of the same

and had no knowledge or notice thereof until the detainer suit in said cross-bill mentioned; and whether or not said Paxton's agents entrusted said James M. Marshall with the deed of trust of February 13, 1872, in controversy as the agent of said Paxton to procure the signature of said Susan C. Marshall; and whether or not said Paxton was and is responsible for the misrepresentation and deceit by which said Susan C. Marshall was induced to sign said deed, as set forth and alleged in her said cross-bill; and whether or not said Susan C. Marshall was ignorant of the real nature of said deed and of the nature of said business; and whether or not she was then incapacitated from understanding the nature of said deed or protecting herself by examining the same to the extent alleged in her said cross-bill; and whether or not said deed of trust was known to her at any time prior to the detainer suit in question; and whether
68 or not said deed is in equity binding upon her under the circumstances disclosed in the evidence or is void as to her.

And whether or not said deed of trust to Thomas E. Marshall of Nov. 21, 1860, is not still in force; and whether or not the supposed deed of Feb'y 13, 1872, is not void for lack of any power in Susan C. Marshall to make the same; and whether or not said Paxton had actual notice of said deed of Nov. 21, 1860, and of the lack of power aforesaid and of the fact that said premises were occupied by Susan C. Marshall as her homestead and that of her children under the deed of trust last named.

And whether or not it was the duty of said Paxton, if said deed of Feb'y 13, 1872, was within the power of said Susan to make, to see to the application of the proceeds for the benefit of the said Susan, and not wilfully and without her knowledge and consent to pay them over to said James M. Marshall with notice that he was using them in his individual capacity.

Whither or not Paxton is continuing said detainer proceedings as alleged.

69 Whether or not said deed of trust should in equity be removed as a cloud, as prayed in the cross-bill; and whether or not divers other material allegations in said cross-bill are true as therein stated; and whether or not said bill should be —; and saving to herself the benefit of the foregoing matters of exception, said Susan C. Marshall humbly prays the judgment of the said court upon the same and upon said report, and that the said cause be recommitted to the said master under special directions in that behalf or that such other order be had and taken by this honorable court as unto equity may appertain; and as in duty bound she will ever pray, &c.

PADDOCK & IDE,
Sol'rs for Susan C. Marshall, Def't.

GEO. L. PADDOCK,
Of Counsel.

Endorsed: Filed May 15, 1882. Wm. H. Bradley, clerk.

70 Afterwards, to wit, on the eighteenth day of July, in the July term of said court, A. D. 1883, in the record of the pro-

ceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, are the following entries, to wit:

Order.

JAMES W. PAXTON
vs.
JAMES M. MARSHALL and SUSAN C. MARSHALL. } In Chancery.

On motion of the complainant, by his solicitor, it is ordered that the bill in this case be amended by striking out the word "was" in the paragraph beginning, "Which said trust deed was, on the 14th day of February, 1872, duly acknowledged," and inserting in the place thereof the words "purported to be," so that the passage as amended will read: "Which said trust deed purported to be on the 14th day of February, 1872, duly acknowledged."

Order.

JAMES W. PAXTON
vs.
JAMES M. MARSHALL and SUSAN C. MARSHALL. } In Chancery.

The counsel of the defendant moved the court to amend the answer herein as proposed in the paper filed as of this day, which motion is overruled by the court.

71 On the same day, to wit, on the eighteenth day of July, A. D. 1883, came the complainant, by his solicitors, and filed in said clerk's office his amended bill in said entitled cause, which said amended bill is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON
vs.
JAMES M. MARSHALL & SUSAN C. MARSHALL.

The complainant moves to amend his bill in the above case by striking out the word "was" in the paragraph beginning, "Which said trust deed was on the 14th day of February, 1872, duly acknowledged," and inserting in the place thereof the words "purported to be," so that the passage as amended will read: "Which said trust deed purported to be on the 14th day of February, 1872, duly acknowledged."

By his solicitors, BOUTELL & WATERMAN.

Endorsed: Filed July 18, 1883. Wm. H. Bradley, clerk.

72 On the same day, to wit, on the eighteenth day of July, A. D. 1883, came said defendant, Susan C. Knight, by her solicitors, and filed in said clerk's office the paper offered and refused as aforesaid as her amended answer in said entitled cause, which said paper is in the words and figures following, to wit:

United States Circuit Court, Northern District of Illinois.

JAMES W. PAXTON *vs.* JAMES M. MARSHALL *et al.*

Said defendant, formerly Susan C. Marshall (now by marriage Susan C. Knight), comes, and by leave of court amends her answer herein, and shows to the court that since the 14th February, 1872, and the filing of the bill herein she has paid out sundry large sums of money for permanent & necessary repairs on the premises in controversy; also other large sums to clear the same from tax liens, including redemptions from a tax purchase held by said complainant or his agents, Baird & Bradley, amounting to about three thousand dollars, a large part, about one-half, of which latter sum was penalty over and above the amount of tax, which tax claim was so acquired by said complainant for the wrongful purpose of eluding the responsibility of his position as a claimant of the life estate of this respondent and compelling respondent & the tenants in re-
73 mainder to redeem from said tax purchase for his benefit, which respondent, on behalf of said remainder tenants, her children, *were* compelled to do by raising said sum by means of a mortgage of said amount on other property, which is still encumbered thereby.

And respondent shows that until the amendment to the bill herein, made July 17, 1883, said complainant was by said bill claiming an immediate right of entry under the trustees' deed in controversy, which right, as respondent is advised, is now in said bill admitted to be conditional upon a future setting off of the homestead in said premises, which has not been done.

And so respondent says that said complainant ought not to be *ad*-mitted to enter said premises until and unless he not only set off said homestead, but account to respondent for said repairs and taxes, and also do all other things required by equity to be by him done, including payment of the costs of said suit at law and those wrongfully imposed upon respondent by his effort to show that said certificate of acknowledgment was true as alleged in said bill.

SUSAN C. KNIGHT, SUED AS MARSHALL,
By PADDOCK & ALDIS, *Solicitors.*

Endorsed: Filed July 18, 1883. Wm. H. Bradley, clerk.

74 On the same day, to wit, on the eighteenth day of July, in the July term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

JAMES W. PAXTON
vs.
JAMES M. MARSHALL and SUSAN C. MARSHALL. } In Chancery. Bill.

And

SUSAN C. MARSHALL
vs.
JAMES W. PAXTON. } Cross-bill.

This cause coming on to be heard on the bill and cross-bill, answers and replications, the report of the master and the exceptions thereto, and the proofs in the case, and the cause having been fully argued by counsel, and the court being fully advised in the premises, it is ordered that the exceptions to the master's report be overruled and the report be confirmed, except as to so much thereof as finds that Susan C. Marshall acknowledged the trust deed described in the bill of the complainant, James W. Paxton, as to which part thereof said exceptions are sustained.

And it appearing to the court that the said Susan C. Marshall did not acknowledge said trust deed, and that the said Susan C. Marshall is entitled to a homestead in the premises described
75 in said complainant's bill of the value of one thousand dollars, and that the said James W. Paxton is entitled to the possession of so much of said premises—to wit, lot twelve (12), and the south twelve (12) feet and three and one-half (3½) inches of lot thirteen (13), in block three (3), in William Jones' addition to Chicago, in Cook county, Illinois, together with the appurtenances thereto belonging, and all the rents, issues, and profits thereof for and during the life of the said Susan C. Marshall—as may not be set off to the said Susan C. Marshall for a homestead, or, in case said premises cannot be divided without injury to the interests of the parties, is entitled to the possession of the whole of said premises upon the payment into court of one thousand dollars for the use of said Susan C. Marshall, it is ordered that the following householders, viz., Henry W. Bishop, Philip A. Hoyne, and Samuel C. Hayes, be appointed commissioners, and, having taken an oath before the clerk of this court for the faithful performance of their duty, that they proceed to appraise the value of said premises, and if said premises can be divided to set off so much thereof, including the dwelling-house, as in their opinion shall be worth one thousand dollars to the said Susan C. Marshall for a homestead, and in case the value of said premises exceeds one thousand dollars, and the same cannot be divided without injury to the interests of the parties, that the
76 commissioners make and sign an appraisement of the value of said premises, and that they report their proceedings to the court for its further action herein.

Afterwards, to wit, on the nineteenth day of July, A. D. 1883, came Henry W. Bishop, Philip A. Hoyne, and Samuel C. Hayes, commissioners, and filed in said clerk's office their report in said

entitled cause, which said report is in the words and figures following, to wit:

Report.

In the Circuit Court of the United States for the Northern District of Illinois.

JAMES W. PAXTON
vs.
JAMES M. MARSHALL & SUSAN C. MARSHALL. } Bill.

SUSAN C. MARSHALL
vs.
JAMES W. PAXTON. } Cross-bill.

Henry W. Bishop, Philip A. Hoyne, & Samuel C. Hayes having been appointed by the court in the above case commissioners to appraise the value of the property in said bill described, viz., lot 12 & the south 12 feet & 3½ inches of lot 13, in block 3, in William Jones' addition to Chicago, in Cook county, Illinois, & to set off so much thereof, including the dwelling-house, as in their opinion
77 shall be worth one thousand dollars to the said Susan C. Marshall for a homestead, & in case the value of said premises exceeds one thousand dollars, & the same cannot be divided without injury to the interests of the parties, that they make & sign an appraisement of the value of said premises & report their proceedings to the court, the said Henry W. Bishop, Philip A. Hoyne, & Samuel C. Hayes, being duly sworn by the clerk of said court, on oath say that they will faithfully perform their duty as such commissioners.

H. W. BISHOP.
S. C. HAYES.
P. A. HOYNE.

Subscribed & sworn to before me July 18, 1883.

WM. H. BRADLEY, *Clerk*,
By E. A. DRUMMOND,
Dep'y Clerk.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON
vs.
JAMES M. MARSHALL & SUSAN C. MARSHALL. } Bill.

SUSAN C. MARSHALL
vs.
JAMES W. PAXTON. } Cross-bill.

Henry W. Bishop, Philip A. Hoyne, & Samuel C. Hayes,
78 the commissioners appointed by the court in the above suit, this 18th day of July, 1883, hereby report that, having first been duly sworn by the clerk of said court for the faithful performance of their duties as such commissioners, they made a personal ex-

amination of the premises described in the order of the court appointing them such commissioners, to wit, lot 12 & the south 12 feet & 3½ inches of lot 13, in block 3, in William Jones' addition to Chicago, in Cook county, Illinois, and appraise the same, with the buildings thereon, at the sum of twelve thousand five hundred dollars. And they further report that said premises cannot, in their opinion, be divided so as to set off a homestead of the value of one thousand dollars to the said Susan C. Marshall without injury to the interests of the parties.

Dated this 19th day of July, 1883.

H. W. BISHOP.
P. A. HOYNE.
SAM'L C. HAYES.

Endorsed: Filed July 19, 1883. Wm. H. Bradley, clerk.

79 Afterwards, to wit, on the twenty-fourth day of July, in the July term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Decree.

JAMES W. PAXTON
vs.
JAMES M. MARSHALL, Since Deceased, and SUSAN C. MARSHALL. } In Chancery. Bill.

And

SUSAN C. MARSHALL
vs.
JAMES W. PAXTON. } Cross-bill.

The commissioners heretofore appointed by the order of July eighteen, 1883, having reported that the value of the premises in controversy is twelve thousand and five hundred dollars, and that said premises cannot be divided without injury to the interests of the parties, and the parties having been heard by their counsel, it is ordered that the report of said commissioners be confirmed. And it appearing to the court that said James W. Paxton is entitled to the possession of said premises and the rents, issues, and profits thereof for and during the life of the said Susan C. Marshall, upon the payment into court for the use of the said Susan C. Marshall of the sum of one thousand dollars for her homestead in said premises:

80 It is ordered, adjudged, and decreed that the said James W. Paxton, within ten days from the entry of this decree, pay into court for the use of the said Susan C. Marshall the sum of one thousand dollars for her homestead in said premises, and also pay to the clerk of this court ten dollars for clerk's commissions; that the said Susan C. Marshall and all persons claiming through or under her since the commencement of this suit deliver to the said James W. Paxton, within twenty days from the receipt by said Susan

C. Marshall, or her solicitor, of notice that said sum of one thousand dollars has been so paid into court, the possession of said premises, to wit, lot 12 and the south 12 feet and 3½ inches of lot 13, in block 3, in William Jones' addition to Chicago, in Cook county, Illinois, and that, upon the failure of the said Susan C. Marshall, or those claiming through or under her, to so deliver possession of said premises, the said James W. Paxton have a writ of assistance therefor.

It is further ordered, adjudged, and decreed that the said James W. Paxton pay one-third of the costs of this proceeding, and that Susan C. Marshall pay two-thirds of the same, and that execution issue therefor respectively, and that the cross-bill of the said Susan C. Marshall shall be dismissed; and the death of James M. Marshall having been heretofore suggested the complainant in the original bill waives any decree against his representative; and the said Susan C. Marshall appearing in court by her counsel and suggesting to the court that she has made valua-

81 ble improvements upon the said property which have enhanced the rental value thereof, and that she has made other expenditures, including certain taxes upon the property, all of which she alleges should be refunded to her if the said James W. Paxton, the complainant in the original bill, shall be placed in possession of the said property, it is ordered by the court that the said Susan C. Marshall have leave within sixty days from the time the said Paxton shall be put in possession of the property to present a petition or other pleading, as she may be advised, for the purpose of presenting her claim against the said James W. Paxton for the decision of the court as may be adjudged equitable, and for that purpose jurisdiction in the case is retained.

82 Afterwards, to wit, on the eighteenth day of April, in the adjourned March term of said court, A. D. 1884, in the record of the proceedings thereof in said entitled cause before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

JAMES W. PAXTON *vs.* SUSAN C. MARSHALL } In Chancery. Original Bill.

And

SUSAN C. MARSHALL *vs.* JAMES W. PAXTON. } Cross-bill.

On this day comes the said defendant, Susan C. Marshall (now Susan C. Knight), and prays an appeal to the Supreme Court of the United States from the decree entered herein on the twenty-fourth day of July, 1883, and the said appeal is allowed to the said defendant upon her filing her bond herein in the penal sum of five hundred (500) dollars, with Charles E. Towne and John B. Knight as sureties, conditioned that said appellant shall prosecute said appeal

to effect and answer all costs in case she fail to make her plea good, which said bond is now filed by her and approved by the court.

83 On the same day, to wit, on the eighteenth day of April, A. D. 1884, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Susan C. Knight, formerly Susan C. Marshall, principal, and Charles E. Towne and John B. Knight, sureties, of the county of Cook and State of Illinois, are held and firmly bound unto James W. Paxton, of Wheeling, West Virginia, in the sum of five hundred (500) dollars, good and lawful money of the United States of America, to be paid to the said Paxton, or to his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, and our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this — day of ——, in the year of our Lord one thousand eight hundred and eighty-four.

The condition of this obligation is such that whereas the said Paxton did, on the 24th day of July, 1883, in the circuit court of the United States for the northern district of Illinois, in chancery, recover a certain decree against said principal obligor (she having been sued as wife of one James M. Marshall, who died before said decree, and she having since the death of said Marshall intermarried with said John B. Knight) in a certain suit in equity, wherein said Pax-
84 ton was complainant and said principal obligor defendant, from which said decree the said Susan C. Knight has prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said Susan C. Knight shall prosecute her said appeal to effect and answer all costs in case she fail to make her plea good, then this obligation to be void; otherwise to remain in full force and virtue.

SUSAN C. KNIGHT. [SEAL.]
CHARLES E. TOWNE. [SEAL.]
JOHN B. KNIGHT. [SEAL.]

Approved April 18, 1884.

THOMAS DRUMMOND.

Endorsed: Filed April 18, 1884. Wm. H. Bradley, clerk.

85 On the hearing of said cause on the same day, to wit, the twenty-fourth day of July, A. D. 1883, the certificate of evidence in said cause was filed in said clerk's office, and is in the words and figures following, to wit:

Certificate of Evidence.

In the United States Circuit Court, Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Compl't, *vs.* SUSAN C. MARSHALL. } Bill.

And

SUSAN C. MARSHALL *vs.* JAMES W. PAXTON. } Cross-bill.

Be it remembered that on the hearing in this cause and cross-cause, on the 24th day of July, A. D. 1883, the said cause and cross-cause were heard upon the report of the master filed therein and the written evidence thereto attached, and the several exhibits and documents therein referred to, which report, written evidence, exhibits, and documents are in the words and figures following, to wit:

86 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Complainant,
vs.
JAMES M. MARSHALL and Others, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 7th day of October, A. D. 1880.

Present: Mr. Waterman, for plaintiff; Mr. Paddock, for defendant.

SUSAN C. MARSHALL, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. PADDOCK, and deposes and says, as follows:

Int. 1. Please state your name, age, residence, and occupation.
Ans. Susan C. Marshall; residence, 1914 Indiana avenue, Chicago.
Q. You are the defendant to the bill of Mr. Paxton in this case?
A. Yes, sir.
Q. How long have you resided on those premises?
A. About 19 or 20 years.
86*a* Q. When were you married to James M. Marshall?
A. November 22d, 1860.
Q. Are these the premises in controversy in this suit as you understand?
A. Yes, sir.
Q. Did you ever live during your married life with Mr. Marshall on any other premises?
A. No, sir.
Q. Who built the dwelling-house on those premises?
A. Wilcox & Ballard were the carpenters, I think.
Q. Was it built after your marriage?
A. Yes, sir.

Q. By Mr. Marshall?

A. Yes, sir.

Q. State what you know as to the selection of this ground for your homestead.

A. We went there before I was married and selected it. He gave it to me—gave me a deed of trust before I was married for me to live on.

Q. Do you remember about hearing about a deed of trust?

A. Yes, sir.

Q. To whom?

A. Tom Marshall, his brother.

Q. Is that Thomas E. Marshall?

A. Yes, sir.

Q. Was that before the house was built on the premises?

87 A. Yes, sir.

Q. It was in pursuance of that selection that the house was built on the premises?

A. Yes, sir.

Q. I now show you a deed purporting to be from James M. Marshall, your husband, to Thomas E. Marshall, bearing date Nov. 21, 1860, and recorded in Cook county recorder's office, book 206 of records, page 365, dated the 22d of November, 1860. I will ask you what deed that is that I show you?

A. That is the one that was made.

Q. That is the one you have spoken of?

A. Yes, sir.

(Deed above referred to offered in evidence, marked Exhibit A.)

Q. What do you know, Mrs. Marshall, as to the place in which this deed has been kept since your marriage; who has had the custody and control of it?

A. Mr. Marshall; I suppose he kept it in his office.

Q. Then I will ask you what was done after the lot was selected and the house built and this deed made with regard to the occupancy of that ground; how was it occupied; for what purpose?

88 A. We lived in it; it was our home.

Q. Made it your home?

A. Yes, sir; built the back part of the house first and lived in the back part while the front part was being built.

Counsel for Susan C. Marshall now offers this deed in evidence and asks that the same may be identified as part of the deposition.

Q. I will show you, Mrs. Marshall, another paper bearing date the 18th of May, 1861, purporting to be from Thomas E. Marshall and others to yourself, recorded, as appears, on the 21st of May, 1861, in book 211 of deeds, at page 546. Will you please look at it and state what you know about that deed, and when you first heard of it or had any knowledge of it.

A. I hadn't any knowledge of it; I didn't know that it was in existence at all not until after this trial commenced. I think I saw it through you the first —, or I saw it with the papers.

Q. You think you saw it through me the first time you saw it?
A. Yes, sir; I never saw it before.
Q. And that was when?
A. After the trial commenced.
Q. What trial?
A. I don't remember the date.
89 Q. I am asking you what trial you mean.
A. The old trial.
Q. Between what parties?
A. Between myself and Paxton.
Q. Do you mean the forcible detainer suit that was tried before Judge Blodgett and a jury?
A. Yes, sir.
Q. Then you never saw that deed, as I understand you, until after that suit began?
A. No, sir.
Q. I will ask you whether that deed was ever delivered to you?
A. No; I never heard of it.
Q. Up to the time of this suit in controversy between Mr. Paxton and yourself for the possession of this property, what was your information in regard to the state of the title?

(Objected to.)

A. The title was held in trust for me.
Q. Under what deed?
A. Under that trust deed to Thomas.
Q. That, as I understand you, was the state of your information then concerning the title?
A. Yes, sir.
Q. And you heard nothing of any other deed affecting that state of title, as I understand you?
90 A. No, sir; in fact I didn't know that there could be one made.

Mr. PADDOCK: I will also offer in behalf of Mrs. Marshall this deed in evidence and ask that it be identified as Exhibit B.

Q. I will ask you, Mrs. Marshall, whether you had any custody or control of this second deed, Exhibit B?
A. No, sir.
Q. I will ask you whether you ever claimed any interest or benefit under this deed, Exhibit B?
A. No, sir.
Q. Do you know Messrs. Baird & Bradley, of Chicago?
A. Do — know them? No, sir.
Q. You have seen them?
A. I suppose I saw them at the time of the trial; that is the only time I ever saw them. I wouldn't know them on the street.
Q. At the time of the trial of the detainer suit?
A. Yes, sir.
Q. What do you know of the fact of a loan having been made,

through Baird & Bradley, some time in February, 1872, to your husband? Had you any personal knowledge of that?

A. Well, I know that he wanted to borrow some money, but I don't think I knew who it was from or anything about it. I
91 didn't know who it was. I knew he wanted me; he wanted to borrow money.

Q. I will ask you whether you saw on this trial of the detainer suit a deed of trust, bearing date 13th February, 1872, from your husband to Lyman Baird, which was offered in evidence on that trial? Do you remember seeing that deed of trust?

A. I think I saw a deed; I couldn't say whether it was that or not.

Q. You saw a deed of trust, did you not, bearing that date?

A. Yes, sir.

[Q.] I will ask you where you were on the 14th of February, 1872?

A. Sick in bed at home.

Q. At what place?

A. 1914 Indiana avenue.

Q. Please state whether you signed a paper on that date purporting to be a deed.

A. I did.

Q. Do you recollect whether you signed any more than one deed on that day?

A. That was all.

Q. What time of day was that?

A. That was in the morning, about eight or half-past—somewhere along there; I don't remember exactly.

92 Q. Who was present on that occasion?

A. Mr. Marshall and my sister and her husband, Dr. Noble, and I think my cousin, and I think some of the children.

Q. Your sister's husband was Dr. Noble, wasn't he?

A. Yes, sir.

Q. Will you please state, Mrs. Marshall, what took place on this occasion; what was said by the parties present, any of them, and what was done?

A. Mr. Marshall wanted me to sign a deed. He said he wanted to borrow some money, as I remember, and wanted me to sign a mortgage. (Objected to.) But he told me he wanted me to sign that paper. He wanted to borrow some money. I asked him "on what?" He said on a lot on Prairie avenue we owned, and I took a pen and signed it. I didn't know anything about what was in the paper. I wouldn't have known if I had looked at it, for I was not well enough.

Q. I will ask you to state what was your condition at that time.

A. I was very sick; I had something like fistula, and was under the influence of morphine a great deal, and didn't know what I was doing; wasn't able to.

Q. Did you read the deed?

A. No, sir, I didn't read anything.

93 Q. Why not?

A. I couldn't; I was too sick. I didn't have sense enough. I had too much pain.

Q. Had you been taking remedies or medicines at that time?

A. Yes, sir; I had been taking morphine for about two weeks every day.

Q. Under a physician's prescription?

A. Yes, sir.

Q. Whose?

A. Dr. Hale's.

Q. Dr. E. M. Hale?

A. Yes, sir.

Q. What was the Prairie-avenue lot to which your husband referred?

A. It was a lot over across on Prairie avenue from where we lived.

Q. Was it improved or vacant?

A. No, it was vacant.

Q. It was vacant?

A. I suppose it was that; we owned two or three lots on Prairie avenue. I don't know what lot it was on the Prairie-avenue property. I don't really know what lot it was.

Q. When he told you that the deed he asked you to sign related to Prairie-avenue property, state whether you believed his statement or not.

A. I did, because I didn't think we could put it anywhere else. I didn't think he could put it on our home.

94 Q. At that time you believed what he said?

A. I believed what he said or I never would have signed the paper.

Q. How long, have you any idea, did this transaction occupy?

A. A little while; I don't know how long.

Q. Well, an hour, or half an hour, or five minutes, or two hours; give us some idea?

A. A few minutes.

Q. When you signed the paper what took place?

A. He went away then and I continued to suffer.

Q. Did he leave the paper with you?

Ans. No; he took it with him, I suppose. I never saw it after that, nor heard of it, nor heard of the money, nor anything connected with it.

Q. Did you realize any money from this transaction?

A. I did not; no, sir.

Q. Was there any money paid to you by anybody on account of it?

A. No, sir; I never received a cent; never had any benefit of it.

Q. Did you take part in any negotiation for a loan on this homestead property?

A. I did not.

95 Q. Did you authorize anybody to borrow any money upon it?

A. I did not; no, sir.

Q. Did you ever have any neg-tiation with James A. Paxton about this loan?

A. No, sir; never did; never heard of him until this.

Q. Until this suit, did you say, or until this what?

A. Until this suit.

Q. How long had you been sick at this time?

A. I think about a week or ten days; I don't remember that exactly; somewhere along there from the time it commenced.

Q. Had you been taking morphine that day?

A. Yes, sir, and all the night before and days before; I had to do it; I couldn't stand the pain.

Q. Can you tell us to what extent you have been taking it?

A. Oh, I don't know any particular time.

Q. I mean in what quantities had you been taking it, how often, and in what doses, do you know?

A. I don't remember; I know it was morphine that they gave me.

Q. Do you recollect as to its effect upon you?

A. Oh, it always affected me; made me crazy.

96 Q. What did it do this time?

A. It affected me the same way; sometimes it puts people to sleep and others it makes wild.

Q. Do you remember whether Dr. Hale saw you that day or not?

A. Yes, sir; he did.

Q. Do you remember whether any other medical adviser was present?

A. Yes, sir; Dr. Reed. Dr. Hale saw me early in the morning. I had a sick child also, and he was attending that, and the other Dr. saw me. Dr. Hale always attended my children, and Dr. Reed——

Q. Dr. Reed saw you the same day, did he?

A. Yes, sir; he saw me the same day. Dr. Hale had been — the same day, and he saw me also.

Q. State whether you were confined to your bed or your room, or whether you were up and around.

A. I was confined to my bed and room both, and couldn't get up.

Q. Does this apply to all day of the 14th of February, 1872?

A. Yes, sir; sometimes I was on the floor and sometimes in bed.

Q. Who did attend to your housekeeping duties during this time?

97 A. My sister and cousin were there together; they both lived with me; at least my sister boarded there and my cousin had been there a long time—seven or eight years.

Q. Did you leave the house on the 14th of February, 1872?

A. No, sir.

Q. Did you leave that room?

A. No, sir.

Q. Did you leave that house the preceeding day, the 13th of February?

A. No; I hadn't left the house for a week or ten days before or a week or ten days after that—longer than that possibly.

Q. This deed of trust of February 13th, 1872, that I have spoken of has been exhibited in court, as you know, [and] purports to have been acknowledged by you before Mr. John G. Shortall. I will ask you what, if any, acknowledgement you ever made on that day before Mr. Shortall.

A. I didn't make any.

Q. Did you ever go to Mr. Shortall's office and acknowledge that deed?

A. No, sir.

Q. Did he, on the 13th or 14th of February, 1872, come to your house?

A. He did not.

Q. How do you know that?

A. Because I know he didn't. I didn't see or hear of him; I suppose he didn't.

Q. Did he come to your room on that occasion?

98 A. He did not.

Q. Did he see you on those days?

A. Not that I know of.

Q. Did he have a conversation with you about acknowledging the deed on those days?

A. No, sir; nothing about it at all; I never saw him.

Q. Then I understand you to deny that you ever made any acknowledgement on that day before Mr. Shortall?

A. I do.

Q. What do you know or recollect of any former deed of trust having been made on this homestead by you and your husband?

A. What do you mean?

Q. Prior to the deed of 1872.

A. I don't know that there was any.

Q. You don't know that there ever had been any?

A. I don't know that there ever had been any; I didn't know there could be one made.

Q. Have you ever received any money, the proceeds of any loan upon this homestead property, prior to the one in question?

A. No, sir.

Q. You say you didn't know there could be any deed of trust made on that homestead; what do you mean by that?

99 A. I didn't know that I could borrow any money or that Mr. Marshall could borrow any; I thought it was fixed so that neither of us could borrow any money on it, or sell it, or do anything with it but live on it; I thought it was fixed so that I should have it as a house, and after I died it should go to my children.

Q. Fixed by whom?

Objected to.

A. Fixed by Mr. Marshall.

Q. Then I understand you, Mrs. Marshall, that you never got any money or proceeds of any loan on this homestead property?

A. I did not.

Q. I understand you that you never knew there had been a mortgage on this homestead property?

A. No, I never knew there had been.

Q. If any was made by your husband, and any extension of that mortgage made, state whether you ever consented to any such extension or had any knowledge of the extension?

[A.] I never consented; I didn't have any knowledge of it.

Q. Did Mr. Marshal read this deed of trust on the 13th of February, 1872, to you when you signed it?

A. No, sir.

Q. What information did you have as to what was in the deed?

100 A. I didn't have any; he just told me it was a mortgage for Prairie-avenue property to borrow some money—a mortgage on that.

Q. Is that all you knew as to what was in it?

A. That was all I knew.

Q. You acted upon that information, *have* you?

A. Yes, sir.

Q. You have referred to the effect of morphine upon you as making you crazy, or causing you to feel crazy. Will you please state what you mean by that expression?

Objected to.

A. It made me out of my head; I didn't know what I was doing.

Q. Mrs. Marshall, were there children born of your marriage with James M. Marshall?

A. Yes, sir.

Q. Can you give their names and ages?

A. Laura, James M. Marshall, Bertha Marshall, Philip, and Susie and the baby, Quineve; just call her that.

Q. What is the age of the youngest?

A. I don't know whether she will be five or she will be six next March; I think either five or six.

Q. What is the age of the oldest?

A. She was nineteen the 3d of October. That is the one who is married.

Q. Laura?

101 A. Yes, sir.

Q. Have your children been living with you during this time?

A. Yes, sir; all the time.

Adjourned to 2 o'clock p. m. Wednesday, October 13th, 1880.

Adj'd further by agreement to Friday, the 15th instant, at 11 o'c. a. m.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Complainant,

vs.

JAMES M. MARSHALL, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 15th day of October, A. D. 1880.

Present: Mr. Waterman, for complainant; Mr. Paddock, for defendant.

Mrs. SUSAN C. MARSHALL, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. PADDOCK, and deposes as follows:

Q. I will show you a paper which was not present on your former examination purporting to be a deed from yourself and bus-
102 band to Lyman Baird, bearing date Feb. 13, 1872, and I ask you to look at it, and state whether that is the paper referred to by you in your testimony as having been signed by you on the 14th of February, 1872.

A. Yes, sir; that is the one I signed; that is my signature.

Q. Do you remember signing any more than one deed or paper at your house on the 14th or 13th of February, 1872?

A. I did not sign any other.

Counsel for complainant objects to all testimony given by witness concerning any conversation which she had with her husband, and all statements made by her husband to her or by her to him on any occasion; and also to the conversation which the witness says preceded the marriage. The paper shown to the witness is marked "Exhibit C" for indentification, but is not offered in evidence by defendant's counsel.

Cross-examination by Mr. WATERMAN:

Q. How old are you?

A. I am 35, I think.

Q. When is your birthday?

A. I do not like to answer that question; I do not know.

103 Q. Do you state you do not know whether you are 35 or 36 years old?

A. I am 36 years old.

Q. When is your birthday?

A. July 24th; that is as near as I can come to it.

Q. You have spoken of signing this deed which is marked "Exhibit C," and you say that your husband asked you to sign it?

A. Yes, sir; he asked me to sign it.

Q. I understand you to say that he told you it was some property on Prairie avenue?

A. He did.

Q. Suppose he had told you it was property on Indiana avenue; should you have signed it?

A. I would not.

Q. Suppose he had read the deed to you; should you have signed it?

A. I would not—that is, if I had known it was the property on Indiana avenue; if he had told me that it was that I would not have signed it.

Q. In what business was your husband engaged in his lifetime?

A. Real estate.

Q. Did he deal largely in real estate on his own account?

A. Some; I do not know what you mean by largely.

Q. How many deeds of real property during your married life do you think you signed?

A. I don't know.

104 Q. Have you any idea?

A. I have not.

Q. Hav-n't you signed hundreds of them?

A. I don't know.

Q. Have you no recollection on the subject?

A. No.

Q. Have you no recollection as to whether you signed more than one?

A. Yes, sir; I signed more than one.

Q. Have you no recollection as to whether you ever signed more than a dozen?

A. I could not tell about that. I have signed a good many. I don't know how many or how often I signed them.

Q. Hav-n't you signed more than fifty?

A. I cannot tell.

Q. Didn't you testify on the former trial you had signed and acknowledged hundreds?

A. I don't remember.

Q. Would you testify you did not acknowledge and sign hundreds of deeds during your married life while living as the wife of Mr. Marshall?

A. I would not testify about it, because I don't remember.

Q. Was it not quite a frequent occurrence?

A. Yes, sir; I used to sign papers often. I don't know whether they were deeds or not. I signed a great many papers. I could not tell how many.

Q. And acknowledged a great many?

A. Some I acknowledged and some I did not.

105 Q. Didn't you acknowledge a great many?

A. I don't know; some I acknowledged and some I did not.

Q. When you say you don't know whether you signed a great many or not, do you mean you have no recollection about it?

A. Yes, sir.

Q. You have no recollection how many deeds during your married life you did sign?

A. No, sir.

Q. Didn't you acknowledge as many as fifty?

A. I don't know. I said that before.

Q. Didn't you acknowledge as many as a hundred?

A. I don't know that.

Q. You could not say you did not?

A. I could not say I did either. I don't remember the number.

Q. What was your habit when your husband came to you and asked you to sign papers during your married life?

A. I just signed it.

Q. If he asked you to acknowledge them, what did you do?

A. I used to acknowledge them. Sometimes he didn't ask me. He would say it was not necessary; that the notary knew me.

Q. Did you ever refuse to sign any paper that he asked you to sign?

106 A. I don't remember.

Q. Did you ever refuse to acknowledge any paper which he asked you to acknowledge?

A. No; not after I signed it I did not.

Q. Your husband — at the time these were signed were living together upon the best of terms?

A. I don't know what you call the best of terms.

Q. Was there any reason, so far as any difference existing between you and your husband was concerned, why you would not have trusted him?

A. We used to quarrel like everything sometimes, and sometimes we did not.

Q. Was there any reason why?

A. I don't know whether you would call it a reason or not.

Q. At the time that you signed this deed you would have signed any paper that he asked you to sign?

A. I don't know whether I would or not. I was not in a state of mind to know whether I would sign —; I can't tell much about it; I was sick and I don't consider I was responsible for it.

Q. Have you given all the conversation that took place between you and your husband on that occasion?

A. I think I have; all I remember, any way.

107 Q. Look at the signature to this instrument now shown and see if that is your signature.

A. It is.

Q. This is a mortgage bearing date the first day of April, 1863, recorded on the 11th day of April, 1863, in book 67 of mortgages, page 298, and now marked "Exhibit D." Will you also look at the signature to that instrument and see if that is your signature.

A. It is.

Mr. WATERMAN: This is a mortgage bearing date Feb. 13th, 1867, and recorded Feb. 18th, 1867, in book 380, page 41, marked "Exhibit E."

Q. Do you remember whether your husband first signed this paper, "Exhibit C?"

A. I do not.

Q. Do you remember whether he read this paper or any portion of it to you before you signed it?

A. He did not.

Q. Do you remember whether any one read any portion of it to you before you signed it?

A. No one read any portion of it to me. I could not have understood it if he had.

Q. This deed, Exhibit B, offered by you, where did you get it?

A. The first — I ever saw it I think Mr. Paddock had it—yes, it was Mr. Paddock.

Q. This deed, Exhibit A, where did you get that?

108 A. I got that from Mr. Paddock; all the papers I have here came from Mr. Paddock. I think I saw that a long time ago; before I was married I guess I saw it.

Q. I mean where did you get them to bring them here.

A. I got them from Mr. Paddock.

Q. All these papers which you have produced here came from Mr. Paddock?

A. Yes, sir.

Q. They were, so far as you know, in the custody or care of your husband?

A. Yes, sir.

Q. During his lifetime?

A. Yes, sir, so far as I know.

Q. Is Susan E. Marshall your husband's sister?

A. Yes, sir.

Q. Where has she lived?

A. In Chicago all the time.

Q. Since your marriage?

A. Yes, sir.

Q. And lives here now?

A. Yes, sir.

Q. Ophelia K. Larmon—was she your sister?

A. Yes, sir; she is here now.

Q. Where has she lived?

A. She has lived in Chicago also.

Q. How near to you since 1861 has Susan E. Marshall lived?

A. Within a mile or two, but she has moved around several times.

Q. You remember where she was living in May, 1861?

109 A. No, sir; I do not.

Q. On the south side?

A. I could not say; she lived on the north side, I think, once; I would not be positive.

Q. Do you remember where Ophelia K. Larmon was living in 1861?

A. On Adams street with my father.

Q. During your married life have you been on visiting terms all the time while with these two ladies?

A. Yes, sir.

Q. On friendly and visiting terms?

A. Yes, sir; we visited occasionally.

Q. Upon such terms as sisters and sisters-in-law residing in the same town usually are?

A. Yes, sir.

Q. And with such intimacy and intercourse backwards and forwards as such relatives ordinarily have?

A. I don't know what you mean by that; we were not as intimate as some, but we were on speaking and friendly terms, and visited occasionally.

Q. When did you ever first make any examination of the contents of this deed, Exhibit A?

A. I think I saw that before I was married or right after, but I didn't know much about it; I didn't pay any attention to it; the only time I investigated it thoroughly was at the time I
110 got it from Mr. Paddock, at the time the first suit was instituted.

Q. At the time the forcible detainer suit was commenced?

A. Yes, sir.

Q. You had never examined the contents until then?

A. Not particularly; I saw it, but could not remember much about it.

Q. You knew it was a deed which conveyed some interest to you?

A. Yes, sir.

Q. Did you understand about all the provisions of the deed and the other interests there were in it?

A. I understood, for my benefit and the children's, and as long as I lived, that it would not be taken away from me.

Q. Do you remember what the improvements were on this lot at the time you married Mr. Marshall?

A. There was not any.

Q. It was improved, then, after your marriage?

A. Yes, sir; right after my marriage.

Q. When did you first know that your sisters, Ophelia K. Larmon and Susan Marshall, had any interest in this property under this deed, Exhibit A?

A. I think Mr. Marshall, when he made the trust deed, said he was going to make it — in case I didn't have heirs it was to go
111 to my sisters and brother. I don't remember whether I knew about that until the forcible detainer was up. I think I did know something about that before that. I think he spoke of it first—the way he was going to make the deed.

Q. When, after signing this deed, Exhibit C, did you first have any conversation about that?

A. I don't remember of having any at all; it was not spoken of at all, as I remember, until the forcible detainder suit. That was the first I heard of it after I signed it.

Q. Then the circumstances attending the signing of that deed, Exhibit C, were not called to your attention from the time of your signing it until the forcible detainer suit?

A. I don't remember its being done.

Q. Do you remember of having any conversation with your husband or anybody else about your having signed or acknowledged that deed, after it was done, up to the time of the forcible detainer suit?

A. No, sir.

Q. Who besides your husband was present when you signed this deed, Exhibit C?

A. My sister and her husband and cousin.

Q. Which sister?

A. Mrs. Noble and Mrs. Boyer, my cousin, and Dr. Noble,
112 my sister's husband, and Mr. Marshall, and, I think, some of the children—the baby, I know, was in the room with the measles sick.

Q. You remember all those persons?
A. I remember their all being in the room.
Q. How long prior to your signing the deed had they been there?
A. My sister and cousin had been there all night. Dr. Noble was lying on the sofa; I remember of his being there.
Q. Dr. Noble boarded with you at that time?
A. Yes, sir.
Q. Did your sister and cousin board with you?
A. My sister boarded with me, and my cousin lived with me for six or seven years.
Q. There was no one present at the time you signed the deed except members of your family?
A. No, sir.
Q. When you say your cousin and your sister had been there all night you mean they had been in the house?
A. No; I mean they had been in the room; my sister had not left me.
Q. Who was the physician who was attending upon you at that time?
A. Dr. Hale was my physician that had been attending me a week or ten days before and my child that was sick, and that day we sent for Dr. Reed, a doctor I had a good deal in the family, and
113 he was there once that day, but he didn't come any more.
Q. The Dr. Noble you speak of?
A. He is a dentist.
Q. He was not attending you?
A. No, sir; just boarding there.
Q. Do you remember whether your husband had spoken to you *you* about your signing this deed prior to his speaking to you that morning?
A. No, sir; he had not
Q. Your husband was at home during your illness?
A. All the time; never left home unless he had business down town.
Q. He went to his business regularly every day and was at home every night?
A. Yes, sir.
Q. What hour did he usually get home at night?
A. Usually between five and six o'clock.
Q. That was the case during your illness?
A. I think once or twice he came home at noon early on account of my being sick.
Q. What hour did he leave in the morning?
A. Usually left between seven and a half and eight and a half; that was his usual hour.
Q. Did you see him the evening previous?
A. Yes, sir.
Q. He was home at the usual time the evening previous?
A. I don't know; I suppose he was.
114 Q. You remember seeing him the evening previous?
A. Yes, sir; he was there.

Q. I asked you if you remembered seeing him the evening previous.

A. I don't remember whether I saw him or not.

Q. Do you remember whether he was at home for dinner the day previous?

A. I do not; I would not say; I could not remember.

Q. Do you remember whether he came home for dinner on that day on which you signed the deed?

A. I do not.

Q. Did you see him on the evening of the day on which you signed the deed?

A. Yes, sir; I did.

Q. Do you remember that you did?

A. No; I don't remember whether I did or not.

Q. Now, when is the first time after you signed the deed that you recollect having seen your husband?

A. I cannot tell that either.

Q. He was away at his business during the day prior to signing the deed and the day subsequent?

A. Most of the time he was away. I can't tell the day. I know he used to be home some, and sometimes would be down town. His regular habit was to go every day and come back between five and six o'clock in the evening.

115 Q. So far as you remember, he followed up his regular habits during your illness?

A. He was at home more; came home in the day because I was sick.

Q. What do you mean?

A. Sometimes to his dinner and sometimes earlier in the evening, and would go down town later in the morning.

Q. How much later in the morning would he go down?

A. I don't remember.

Q. Do you remember how much earlier he came home in the evening?

A. I think I remember that he came home once or twice at three or four o'clock.

Q. Where were you in the room when you signed this deed?

A. I was in bed.

Q. Do you remember anything about who got the ink for you or the pen?

A. I think it was my sister, Mrs. Noble.

Q. She brought the pen and ink?

A. Yes, sir.

Q. Do you remember whether they brought a book?

A. No, sir.

Q. Or anything to lay the deed upon when you signed it?

A. No, sir.

Q. Do you remember whether anybody else said anything at the time you signed this deed besides what your husband stated?

116 [A.] I think Mrs. Noble made some remark about my signing. I think she made some remark.

Q. What was the remark?

A. I think it was to be careful what I signed or something of that kind.

Q. What did you say, if anything, at the time you signed it?

A. I said I might as well sign it; I could not give my home away, any way; I had signed everything else pretty much; it would not make any difference.

Q. You said you might as well sign it; you could not give your home away, any way; you had signed pretty much everything else, and it would not make any difference?

A. Yes, sir.

Q. That is what you said?

A. I think I said that; some remark like it; of course I can't remember.

Q. That was the substance of what you said?

A. Yes, sir; I had given everything away and could not give that away, because I thought it was fixed so I could not.

Q. Do you remember whether any reply was made to that by your husband or anybody else?

A. I don't think he talked much. I don't remember anything. He said it was the Prairie-avenue property, and he was in a
117 hurry and wanted to get money and wanted to use it.

Q. He said he wanted to get money and had to use it?

A. Yes, sir.

Q. Did he say how much?

A. No, sir.

Q. Or what he wanted to do with the money?

A. No, sir; didn't have any conversation on that subject.

Q. How did — happen to say at that time you could not give your home away, any way?

A. Because I always supposed it was fixed so it was impossible for me to do it, and the deed of trust I thought was made that way, and I didn't think I could do it.

Q. That is what you understood at the time?

A. Yes, sir; that was what he told me.

Q. Because you thought of that at the time you made that remark that you did?

A. I don't know why I did; of course I can't tell.

Q. But you remember having made the remark?

A. Yes, sir.

Q. Now, suppose when you made that remark your husband had told you this was the deed of your home; what should you have said?

A. I would not have signed it if I had known enough to know what the deed was about. I would not have signed it, any
118 way, without looking at it if I could have read it.

Q. Was it your habit to read over all the papers which your husband brought you to sign?

A. I did not often read them; sometimes I did.

Q. Can you recollect any instance in which you read the paper through which your husband asked you to sign?

A. No; I cannot.

Q. Now, you have testified that you had been taking morphine?

A. Yes, sir.

Q. How do you know you had been taking it?

A. Because when I would be rational and out of pain I asked; I always do when I take anything. My sister told me she was giving me morphine.

Q. Don't you remember yourself having to take it?

A. No; I don't remember, and didn't know what I was taking until she told me?

Q. It is simply because your sister told you you had taken morphine that you do remember?

A. The doctor said so. I know how it affected me; I had taken it before. When I would be rational I could tell when I tasted it. They didn't give it me when I was rational, because I was out

119 of pain or I was not in so much pain then.

Q. Do you mean to say you have no recollection of taking any morphine?

A. I don't know.

Q. Have you any recollection of taking morphine?

A. I have.

Q. That is, you have a recollection of taking it other than what has been told you?

A. No, I have not.

Q. Then you have no recollection of taking morphine?

A. Unless I was told.

Q. The only way you know is because you have been told?

A. I know the effect it had; nothing else affects me in that way.

Q. When did you first know you had been taking morphine?

A. I don't remember; all the time during my sickness, I suppose.

Q. Have you any recollection of taking morphine at any time during your sickness?

A. Yes, sir; once or twice after I got better I took some medicine that I took while I was sick, because I felt pain, and was afraid I would have more and took it then, the same medicine I took while I was very sick and didn't know it.

Q. How do you know it was the same medicine you have taken when you were very sick and didn't know it?

A. Because of the prescription the doctor gave me.

120 Q. How do you know it was the same prescription?

A. The doctor told me it was, the same as I would know any medicine.

Q. Do you mean to be understood you know it was the same prescription because the doctor told you?

A. I had taken it before; I can't understand.

Q. How do you know when you were getting better, as you say, you then took the same prescription or medicine which you had taken when you did not know what you were about?

A. Because the medicine I had been taking all along in my sickness.

Q. How do you know?

A. When I was first taken sick he gave me the medicine; kept giving it to me a week or ten days; he said it was morphine; I am no doctor but I know what morphine is.

Q. Do you recollect when you were first taken sick of taking medicine which the doctor said was morphine?

A. Yes, sir; and I had taken it often before.

Q. Do you recollect having taken any morphine the day previous to the signing of this paper, Exhibit C?

A. Yes, sir; I took it all days before, and part of the time was conscious.

Q. At what time during the day previous, when you were conscious, did you take any morphine that you remember?

121 A. I don't remember.

Q. At what time during the night previous or in the morning upon which you signed this deed, Exhibit C, do you remember having taken any morphine?

A. The doctor was there early in the morning. I was in such pain he gave me something; said he gave me morphine then to quiet the pain, and that was the time that made me so wild and unconscious.

Q. Do you remember of your own recollection having taken morphine on the morning on which you signed the deed prior to signing it?

A. Yes, sir; I do.

Q. By whose direction did you take it then?

A. Dr. Hale.

Q. Then Dr. Hale had been there that morning prior to your signing that deed?

A. Yes, sir.

Q. And by his direction on that morning you had taken morphine?

A. Yes, sir.

Q. At the time you took it you knew what you were taking?

A. Yes, sir; I think I did.

Q. Do you remember about it?

A. I know he gave me medicine—that is, I took morphine; I know I took it.

Q. On that morning prior to signing the deed?

A. Yes, sir.

Q. By direction of Dr. Hale, who was then present?

122 A. Yes, sir.

Q. How long prior to signing this deed?

A. It was early in the morning. He was sent for on purpose to give it to me, or give me something to quiet me.

Q. Did it have a quieting effect?

A. Never had, but helped to quiet pain, but made me wild.

Q. When were you wild; what do you mean by that?

A. Unconscious, partially.

Q. Do you mean unconscious of what was going on around?

A. Not exactly that; so I would not be able to read or do anything intelligently; so I would not understand anything; would

not be able to sign a paper or anything of that kind to know what I was doing. Of course I would know what was going on in the room.

Q. At the time you signed this deed did you think it to be a paper of any importance?

A. I said what I thought it was before. I said I thought it was to get money on a piece of property on Prairie avenue. That was all I knew about it or thought about it; did not think anything about it.

Q. Did you know it to be a paper of any importance?

A. I didn't think anything about it.

Q. At the time you signed this paper did you consider it to be a paper of any *of any* importance?

123 A. I could not answer further. I do not know what to say. I was not capable of knowing whether it was important or not. I don't know how I ever signed it.

Q. How long was it before the effect of the morphine, which you had taken the morning prior to the signing of this deed, passed away?

A. I don't remember.

Q. Do you remember when you first became intelligently conscious after taking that morphine?

A. No, sir; I do not.

Q. Do you remember what occurred during that time?

A. I don't think I knew much all day.

Q. Were you aware what was going on about you during that day?

A. Part of the time I was. I remember it was Valentine's day, and the children were all around the room.

Q. Do you remember whether they received any valentines.

A. I didn't have anything to do with them. No, sir; I do not.

Q. Didn't you testify on the former trial to their having received some valentines?

A. I don't know whether I did or not. I remember something about valentines—sending some or something of that kind—but I don't remember what I did testify before.

Q. When did Dr. Hale next call to see you after this morning?

A. He came every day for quite awhile.

124 Q. For how many days?

A. I don't know, but two or three weeks, I think.

Q. Dr. Reed came that morning and didn't come any more?

A. No, sir; not that I know of.

Q. Did Dr. Reed lance this sore during that morning?

A. No, I don't think he did. I don't remember whether he or not.

Q. When did you begin to improve in your illness?

A. In five or six days, I guess.

Q. After the signing of this deed?

A. I don't remember.

Q. You don't remember what was going on during the day after signing the deed?

A. No, sir.

Q. Or the day on which it was signed?

A. No, sir.

Q. You sat up in bed and signed this deed, as I understood you, or reclined in bed?

A. I don't know whether I did or not.

Q. Do you recollect whether you were in bed or not?

A. I recollect I was in bed, but I don't know what position I was in.

Q. Do you recollect anything else you said at the time you signed that deed other than what you have stated?

A. No, sir; I don't think I do.

Q. You know whether you do recollect or not, don't you?

125 A. I don't think there was anything else said.

Q. You don't remember anything else being said?

A. I don't think there was anything else said.

Q. Do you know anything of the quantity of morphine you had taken that morning?

A. No, sir.

Q. Or how many times you had taken it?

A. No, sir.

Q. Do you recollect of taking it more than once?

A. I don't remember how many times I took it.

Q. Do you recollect of taking it at all?

A. Yes, sir.

Q. You don't recollect of taking it but once?

A. No, sir; I don't recollect of taking it but once; I was unconscious, and if they gave it to me I didn't know it.

Q. Do you mean you were unconscious from pain?

A. From the medicine and pain together.

Q. From what medicine?

A. The medicine I took that morning. Frequently prior to that [I] had taken medicine. I had been taking it right along for several days before, and at times I was unconscious. I don't think I was ever fully from under the medicine at all, because I was in such pain I took morphine regularly along.

126 Q. Then that morning do you recollect having taken morphine?

A. It seems to me I have answered that question four or five times.

Q. I want to know whether you recollect taking morphine that morning?

A. I don't remember what I said back there; what is the question?

Q. Do you recollect taking morphine on the morning on which you signed this deed, Exhibit C?

A. I recollect the doctor gave me medicine and it was morphine.

Q. You were conscious at the time you took that medicine?

A. I was partially conscious; I don't think I was ever out from under the influence of medicine at all.

Q. You were conscious enough to know what you took?

A. I was conscious enough to take medicine, morphine—I suppose it was morphine.

Q. You were conscious — to know you took morphine.

A. I was conscious enough to know I took medicine; I don't know whether it was morphine or not; it was something to allay the pain, and the medicine I had been taking before.

After taking that medicine that morning, how soon after that did you become unconscious?

A. I don't know.

127 Q. Have you any recollection of becoming unconscious after taking the medicine?

A. I was partially unconscious all the time.

Q. Partially unconscious when you took it?

A. Yes, sir.

Q. Have you any recollection of any change in your state after you took the medicine, so far as consciousness is concerned?

A. I could not be so and have any recollection. I was told afterwards I was unconscious. It affected me the same as it always did. I was stupid in speaking, and wild and out of my head most of the day. I was told that; I don't know it myself; I was told so by my nurse.

Q. When did the nurse tell you that?

A. We spoke about it afterwards.

Q. When?

A. Some time towards night or during the day; it was some time during the day she was telling me how it affected me.

Q. You remember your nurse told you during that day?

A. No; I don't know whether it was that day or the next day or the next day; we talked about it some time.

Q. How many days afterwards was it?

A. I don't know.

Q. When your nurse told you that, what did she say to you?

A. She told me how it affected me, how badly it affected me, and she thought I ought not to take morphine, because it [had]

128 such serious effect upon me.

Q. Did the nurse tell you when you had taken it?

A. I don't remember.

Q. It was several days, and you don't know how many, after the deed was signed she told you you had been taking morphine and it made you wild?

A. It was not several days she told me I had taken it, but what effect it had on me.

Q. When was it she told you you had taken morphine and the effect — on you?

A. I knew I had taken medicine that morning.

Q. You said a little while ago your nurse told you you had taken morphine and it had made you wild. When was it?

A. I don't think I said morphine.

Q. What was it your nurse told you?

A. Told me I had a very bad day because the morphine affected me unfavorably. That is all I know about it.

Q. When was it she told you?

A. I don't know whether it was that day or the next or the next; I can't remember,

Q. I understand you to say your nurse told you that you had had a very bad day of it?

A. Yes, sir.

Q. That you had been taking medicine and it made you wild?

129 A. I don't remember whether she said medicine or morphine.

Q. You don't remember what day it was she said that?

A. No, sir.

Q. Who was the nurse?

A. Mrs. Noble. She had been taking care of me all through my sickness.

Q. You were examined as witness in the United States circuit court for this district on the trial of the forcible-detainer case of Paxton *vs.* Marshall?

A. Yes, sir.

Q. You testified as a witness there in your own behalf?

A. Yes, sir.

Q. And testified relative to the circumstances attending the signing this deed, Exhibit C?

A. Yes, sir.

Q. How did it happen that in that testimony you did not say anythink as to your having been wild or out of your mind when you signed this deed?

A. I suppose because the question was not asked me.

Q. How did it happen you did not say anything about your having taken morphine?

A. Because it did not come up before me in that way.

Q. Who was you counsel during that trial, and who examined you on that trial as a witness?

130 A. Mr. Paddock.

Q. The same gentleman who is your counsel now?

A. Yes, sir.

Q. I believe I cross-examined you then as I have now?

A. Yes, sir.

Q. You say you suppose you did not testify as to your having been wild and out of your mind or having taken morphine at the time you signed this deed, because you suppose the question was not asked you. Did you remember it at that time?

A. Certainly I did.

Q. Had it in mind at that time?

A. Certainly I did.

Q. And yet said nothing about it?

A. Yes, sir; I didn't think it was necessary. I was not questioned on that point. I could not remember it now if I had known it then.

Q. Did you have any conversation with your sisters, either Mrs. Susan Marshall or Ophelia K. Larmon, about their having signed this deed, Exhibit B?

A. I didn't know there was such a deed; never talked with them about property deeds or anything at all; didn't know there was anything of the kind in existence.

Q. You say you didn't talk with them anything about the property?

131 A. No, sir; never spoke to them about it in my life—about that deed or the property, or anything in connection with it or the other deed either, the old deed.

Q. Mr. Marshall lived with you up to the time of his death.

A. Yes, sir.

Q. I think you have testified you lived from the time you went to this property to live up to the time of his death on this property?

A. Yes, sir, with the exception of a few weeks when I was boarding.

Q. When was that?

A. That was before I went to the place at all; that was right after the marriage.

Q. From the time you went there to live you remained there?

A. Yes, sir; I stayed there.

Q. You have lived there until now?

A. Yes, sir.

Q. And living with your husband so long as he lived?

A. Yes, sir; and now live with my children.

Q. How long prior to your being examined as a witness was it that you knew this forcible-detainer suit had been begun?

A. When I was notified.

Q. It was a year previous, was it not?

A. I don't know; I don't recollect.

Q. It was quite a time previous?

A. It was the time when I was served by the marshal that

132 I first knew there was anything like that in existence, because I asked him myself when he called. I was astonished; he said he had often to do very unpleasant things like that; that is the remark he made.

Q. Then after that you knew that suit was based upon the deed which you had signed?

A. I knew Mr. Marshall and I both were notified there was a forcible-detainer suit, and we were to appear and answer to it, and I knew it was something I must have signed or I would not have been called upon.

Q. How soon after that did you and Mr. Marshall, or did you, have any conversation with anybody about what the deed was that you had signed?

A. I asked Mr. Marshall right away what it was and what the man meant. I wanted to find out. He told me then how it was. I was very much astonished, of course, and went right to work and investigated it myself.

Q. These two bonds that are here, which are now marked Exhibits F & G—were they found among Mr. Marshall's papers?

A. I suppose so.

Q. Did you get them from Mr. Paddock?

A. He produced them. I don't know I ever saw them. I never had any of Mr. Marshall's papers at all; don't know I ever saw these before.

Q. They are not papers you had the care of?

A. No, sir; don't know anything about them.

133 Q. When did you first know of there being a mortgage upon these premises running to Carter Harrison?

A. I don't know what you mean.

Q. When did you first know of there being a mortgage on these premises to Carter Harrison?

A. I don't think I ever knew there was one.

Q. Do you know now there ever was one?

A. No, sir.

Q. That is something you know nothing about?

A. No, sir.

Q. Then you had nothing whatever in any way to do with any mortgage on the premises running to Carter Harrison?

A. No, sir.

SUSAN C. MARSHALL.

Subscribed & sworn to before me this 15th October, 1880.

H. W. BISHOP,

Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

134 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Complainant,

vs.

JAMES M. MARSHALL and Others, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court.

FRIDAY, *the 15th day of October*, 1880.

Present: Mr. Paddock, for defendant; Mr. Waterman, for complainant.

Mrs. OPHELIA K. NOBLE, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. PADDOCK, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Ophelia K. Noble; residence 1822 Wabash Ave., Chicago.

Q. You are the wife of Dr. Noble who has been referred to by the witness Mrs. Marshall?

A. Yes, sir.

Q. You are Mrs. Marshal's sister, are you not?

A. Yes, sir.

Q. How long have you lived in Chicago?

A. 18 or 20 years.

Q. Where were you living in May, '61?

135 A. At my father's on Adams street.

Q. What was your father's name?

A. Philip Larmon.

Q. Where was Mrs. James M. Marshall living, if you recollect, in May, 1861?

A. I think at 930 Indiana avenue.

Q. Do you remember how long it was after her marriage that she went to 930 Indiana avenue?

A. No, sir; I don't remember how long.

Q. A considerable time?

A. No, sir; a short time.

Q. Within a short time of her marriage she went to this house, 930 Indiana avenue, as I understand?

A. Yes, sir.

Q. Were you present on 14 of February, 1872, at Mrs. James Marshall's house on an occasion when Mrs. Marshall signed a paper or deed?

A. Yes, sir; I was living there at the time.

Q. I will ask you what was the state of Mrs. Marshall's health on that day, and what had it been prior to that time?

A. She had been quite sick for a week or ten days, confined to her bed, and I was taking care of her. She had been taking medicine to quiet her from Dr. Hale. She was suffering a good deal of pain, and at times was quite unruly. On this particular day Dr. Hale had been called in quite early in the morning, and had
136 given her some medicine, which he said was morphine, and I had given her a dose about an hour before breakfast.

Q. You have said that at times Mrs. Marshall would appear quite unruly. In what respect was she unruly?

A. She was ugly and contrary and impatient.

Q. W*as* attention, if any, was she giving to the ordinary duties of housekeeping?

A. Not any.

Q. State whether or not she was sick in bed or up about the house.

A. She was confined to her bed entirely.

Q. Did she leave her room during that day?

A. No, sir; she did not leave her room.

Q. I will ask you whether or not she exhibited evidences of being in pain; and, if so, what they were.

A. She was in terrible pain; could not keep still. She was not screaming, or anything of that kind; but she would keep groaning and making a great deal of fuss.

Q. She was groaning and making a fuss on this day, February 14th?

A. Yes, sir; until she was quieted by the medicine.

Q. How many doses of medicine do you remember of giving her that morning?

A. I think I gave her one while the doctor was there and one about an hour afterwards; gave them to her an hour or so apart during the day until she was relieved.

Q. What time was the doctor there?

137 A. In the morning, between six and seven o'clock.

Q. Do you remember Mr. Marshall coming in on that morning in regard to her signing a paper?

A. Yes, sir.

Q. About what time was that?

A. Somewhere about eight or half-past, perhaps later.

Q. What was Mrs. Marshall's condition at that time?

A. Her pain was somewhat relieved; she seemed a little more quiet.

Q. Did she converse; and, if so, what was the nature of her conversation at that time?

Conversation objected to.

A. She said but very little.

Q. What part had she been taking in the usual conversation or anything else during that forenoon up to the time her husband came in?

A. The most she had been doing was we were trying to get her relieved; her cousin was making a poultice and I was bathing her head and giving her medicine, and such things as taking care of a sick person.

Q. Were other things done to relieve her suffering besides medicine; and, if so, what were they?

A. Nothing but applications and poultices.

Q. Had that been done before her husband came in about the deed?

A. I think we were about doing it at the time.

138 Q. Did you have conversation with her prior to the time her husband came in that morning?

A. Nothing in particular.

Q. You may go on and state what took place when Mr. Marshall came in and began his reference to the deed, and state what was said by anybody present and done, and who were present.

A. My cousin, Mrs. Boyer, was there; she was at the stove making a poultice. My husband was on the lounge reading a paper. The children had been in a few minutes before, and I had been writing some valentines for them, directing them. Mr. Marshall came in and went to the closet to his coat and took out a paper and says: "Sue, I wish you would sign this paper." She said: "What is it?" or something to that effect. He said "Oh, it is a paper I want to borrow some money on—the Prairie-avenue property." So he asked me to get a pen and I took it to the bed—pen and ink—and she signed the paper, and Mr. Marshall took it and went away, and I said: "Sue, you had better be careful what you sign." She said: "Oh, it don't make any difference; I have signed away nearly everything; I can't sign away my home." That was all the conversation we had about the paper. Mr. Marshall went down town, and we went on with the ordinary duties of the day.

Q. Do you remember whether the deed was read to Mrs. Marshall?

139 A. No, sir; it was not.

Q. Do you remember her position in bed when she signed it?

A. She was unable to sit up; she was propped up with pillows, and I gave her the pen.

Q. Was anything said by Mr. Marshall, or any one else then present, to the effect — this was a deed to the Indiana — property?

A. Not anything.

Conversation objected to.

Q. I will ask you whether Mr. Marshall's statement that the paper related to Prairie-avenue property was believed by you?

Objected to.

A. I was in the habit of believing whatever he said of that kind. It was not a matter I took a great deal of interest in. I always believed whatever he said of business matters.

Q. Did you believe that?

Objected to.

A. Yes, sir.

Q. Then, — I understand you, neither Mr. Marshall nor any one else at that time said anything to the contrary by way of showing that this paper really related to the Indiana-Ave. property?

A. No, sir; there was nothing said.

Q. When did you after that learn or hear for the first time that the paper which Mrs. Marshall, your sister, signed on that
140 day did not relate to the Indiana-Ave. homestead?

Objected to.

A. Not until she had heard there was something of a suit, and she spoke to me about it and asked if I remembered her signing this paper.

Q. The suit you refer to is the detainer suit brought by Paxton in the United States court?

A. Yes, sir.

Q. About how long did this affair take in the bed-room when the deed was brought in and taken away by Mr. Marshall?

A. I should think ten or fifteen minutes; not any more. He was there while he was brushing his coat and getting ready to go down town.

Q. Did he brush his coat before he mentioned signing the paper?

A. I think not.

Q. What part of the house was this bed-room where Mrs. Marshall was sick?

A. The front room on the second floor.

Q. Who was in charge on that day of the ordinary affairs of the house?

A. My cousin; she was in charge of the housekeeping and I was in charge of Mrs. Marshall.

Q. What part, if any, did Mrs. Marshall take that day in regard to the business of the house?

A. Not any at all.

Q. Why not?

A. She was not able and not for several days after.

141 Q. If you observed her condition on the morning of 14th of February, 1872, up to the time of the signing of this deed, Exhibit C, state what it was in reference to her being under the influence of medicine which you had been giving her.

Objected to.

A. She was under the influence of medicine, but not so much so but what we could rouse her to speak with her, or anything of that kind.

Q. Was it necessary to rouse her in order to get her attention to what was asked of her?

A. Sometimes it was when she was more under the influence of medicine than other times. At this time she was wide awake when Mr. Marshall came into the room—that is, she was not stupid, but was more or less out of her natural state; morphine never made her stupid, as it does some other people, but made her more restless.

Q. Will you explain so we can understand what you mean by being out of her natural state on this morning?

Objected to.

A. I mean was flighty and would drop off in a doze, and would talk in her sleep and look unnatural.

Q. That was her condition on the morning of February 14th, 1872, as I understand you?

A. No, sir.

142 Q. Does that describe her condition at the time Mr. Marshall asked her to sign the deed?

Objected to.

A. Yes, sir.

Q. To what extent did she have any conversation with you or any one else in the room that morning, so far as you observed?

A. She did not have much conversation, except to say what she would want done to herself. She was suffering so much when she was sick she was always wanting something done.

Q. Her conversation, then, was confined, as I understand it, mainly to her own sufferings and what she wished done to relieve them?

A. Yes, sir.

Q. Do you remember how long she had been sick?

A. A week or ten days or two weeks.

Q. Do you remember how long a time in days the taking of this medicine had been kept up prior to the signing of this deed?

A. I think she had been taking it several days or a week.

Q. Do you remember whether she continued taking medicine after signing the deed?

A. Yes, sir.

Q. You spoke of Dr. Hale having been in attendance. How long did he continue to attend her; do you remember?

143 A. He was there for a number of days. He was attending also a sick child.

Q. I will now call your attention to another subject. Please look at the paper now shown, marked Exhibit B, and say if you recognize and identify your signature as Ophelia K. Larmon to that paper.

A. Yes, sir.

Q. That is your name and handwriting?

A. Yes, sir.

Q. This deed which I have just shown you, and which you say you signed, bears date May 18th, 1861, and it purports to run from Thomas E. Marshall, Susan E. Marshall, and Ophelia K. Larmon to Susan C. Marshall. Do you know the handwriting of this deed?

A. Yes, sir; that is Mr. Marshall's.

Q. Which Marshall?

A. James N. Marshall.

Q. What do you know about this deed ever having been delivered to Susan C. Marshall?

A. I don't know any.

Q. Did you ever deliver it to her?

A. No, sir.

Q. Have you any recollection of the occasion of your signing it? Do you remember signing?

A. I have an indistinct recollection of signing a paper at Mr. Marshall's office. I never signed any paper for him but once. I don't know what it was.

Q. Was the paper that you did sign explained to you at the time you did sign it?

144 Objected to.

A. No, sir.

Q. Was it stated to you that it had any reference to the homestead, 930 Indiana avenue?

Objected to.

A. No, sir.

Q. When you signed this paper that you say you signed at Mr. Marshall's office, did you have any knowledge that it related to the premises in controversy—930 Indiana avenue?

A. No, sir.

Q. Did you read the paper?

Objected to.

A. No, sir.

Q. Was it read to you?

Objected to.

A. No, sir.

Q. Were you made acquainted with its contents?

Objected to.

A. No, sir.

[Q.] ——.

Q. Mr. Marshall wanted me to sign the paper. He said, "I want you to sign the paper;" and I signed it. I was in the habit of doing everything of that kind, and had a great deal of confidence in him; and I never asked him what I signed.

Q. You didn't know.

A. No, sir; didn't have any idea.

Q. I understood you to say that you never delivered that paper to Susan C. Marshall, your sister.

145 A. No, sir; never had it in my hands except to sign it.

Q. When did you for the first time learn that this paper I have shown you mentioned the Indiana-avenue property in question?

Objected to.

A. What you said to me now.

Q. Then I understand you to say before to-day you had no actual knowledge of having made the deed to Susan C. Marshall of this Indiana-avenue property in controversy in this suit.

Objected to.

A. No, sir.

Q. Did you ever have any conversation on this subject with Mrs. Susan C. Marshall on the subject of this deed to her?

Objected to.

A. No, sir.

Q. You remember what was done with the paper when you signed it—what was done with it—who took it, if anybody?

A. I don't know.

Q. Did you take it?

A. No.

Q. Did you let it alone after that?

A. Yes, sir.

Q. I understood you to say you don't know of any delivery having been made of that paper to Mrs. Susan C. Marshall?

A. No, sir; never knew anything of the paper.

Q. Where was Mr. J. M. Marshall's office when you signed this paper?

146 A. Corner of Washington and Clark St.

Q. What conveniencies did he have, if any, for keeping papers and documents there? Did he have the usual vaults that real estate men have?

A. Yes, sir.

Q. Do you know whether he had any such conveniences, vaults, or safes at his residence?

A. I do not.

Q. You don't know that he had any, do you?

A. No, sir; I do not.

Adjourned to Monday, 2 p. m., October 18th, 1880.

SATURDAY, *October* 18*th*, 1880.

Examination continued pursuant to adjournment.

Present, as before.

Cross-examination by Mr. WATERMAN:

Q. Mrs. Noble, you speak of living at your father's on Adams street; whereabouts on Adams street?

A. Between Clark and Dearborn.

Q. You speak of having been present when Mrs. Marshall signed a paper. Did you read that paper?

A. No, sir.

Q. Did you have any knowledge of its contents?

A. No, sir.

Q. Did you examine the paper at all?

A. No, sir.

147 Q. Do you remember whether you had it in your hands at all or not?

A. I don't think I did.

Q. At what hour in the morning did you first see Mrs. Marshall?

A. I was in the room pretty much during the night?

Q. When you say pretty much, what do you mean by that?

A. I mean that I was in the room before daylight and in the room quite late after bed-time; my room was on the same floor and nearly adjoining.

Q. Where did you sleep during the night?

A. I laid on the side of the bed.

Q. On what bed—her bed?

A. No, sir; the children's bed.

Q. That is, Mrs. Marshall's children?

A. Yes, sir.

Q. You say you were back and forth from Mrs. Marshall's room during the night?

A. Yes, sir.

Q. Did you lie down to sleep in your own room?

A. Yes, sir.

Q. And then came back to Mrs. Marshall's room before daylight?

A. I should judge about five o'clock, perhaps.

Q. Was she awake at the time?

A. Yes, sir.

Q. What conversation did you have with her that morning, if any?

A. No, sir; nothing, except she was in great pain.

148 Q. You did have a conversation as to that, did you?

A. Yes, sir.

Q. At what hour was it that Dr. Hale came there?

A. Between six and seven.

Q. How long was he there?

A. Well, I could not say—not long; I could not say exactly.

Q. Were you in the room while he was there?

A. Yes, sir.

Q. Did he have any conversation with Mrs. Marshall?
A. Yes, sir.
Q. Do you recollect what it was?
A. No, sir; it was just relative to *her* asking her how she felt.
Q. Did she tell him how she felt?
A. She told him what pain she was in.
Q. Do you remember what, if anything, he said?
A. No, sir; not precisely what he said to her.
Q. You don't *you* remember what was said?
A. Nothing that he said to her; no, sir.
Q. Now, at what hour did Mrs. Marshall have her breakfast next morning?
A. Well, it was the usual breakfast hour; the family had breakfast, and she had breakfast.
Q. What was their usual breakfast hour?
A. About half-past eight o'clock—half-past eight.
149 Q. Had she had her breakfast at the time her husband came into the room?
A. I don't remember.
Q. Was it before or after he had had his breakfast that he came in?
A. It was after he had had his breakfast.
Q. What hour was it that he came in?
A. Half-past eight, I think.
Q. Had he been in the room previous to that time that morning?
A. Yes, sir.
Q. When was he first in the room that morning?
A. He was in the room when I first went into the room.
Q. When you first went in there that morning?
A. Yes, sir.
Q. Where did you remain during the night previously?
A. In the room adjoining; there *was* two rooms from the one she was in.
Q. Do you mean that it was a room with an alcove in it?
A. Yes; there is an alcove in it; then there is a room that the children occupied, slept in.
Q. Which room did he remain in during the night?
A. I could not tell; he was in one of the rooms part of the time, and part of the time in the other.
Q. He was in the room with Mrs. Marshall when you went in in the morning?
A. Yes, sir.
150 Q. Did he remain there until you went to breakfast?
A. Yes, sir.
Q. How long was he away to breakfast?
A. 15 or 20 minutes.
Q. Do you recollect whether he had any conversation with his wife before he went to breakfast?
A. No, sir; I do not.
Q. You don't remember?
A. No, sir.
Q. How long was he away at breakfast?

A. I could not say.
Q. I think you said the usual breakfast hour was eight o'clock.
A. Yes, sir.
Q. Did you breakfast at the usual hour that morning?
A. I think so.
Q. Did you have any conversation with Mr. Marshall that morning prior to his going to breakfast?
A. No, sir.
Q. Do you recollect anything he said that morning prior to his going to breakfast?
A. Not anything in particular.
Q. Were you in the room when Dr. Noble came in?
A. I don't remember whether I was or not.
Q. Do you remember when he came in?
A. No, sir.
Q. Do you remember whether he was there or not when Mrs. Marshall signed the paper?
151 A. Yes, sir; he was.
Q. What was he doing?
A. He was lying on the lounge reading the paper.
Q. The morning paper?
A. Yes, sir.
Q. Do you remember how long he remained in the room?
A. No, sir.
Q. Do you remember what conversation you had with him in the morning?
A. I don't remember that I had any.
Q. Do you remember whether he had any conversation with Mrs. Marshall before he went away in the morning or before she signed the paper?
A. No, sir.
Q. Do you remember what the occasion was of his coming into the room that morning?
A. No, sir.
Q. You say he was lying upon the lounge at the time she signed the paper?
A. Yes, sir.
Q. Was he accustomed to coming into that room in the morning and lying upon the lounge and read the paper?
A. Yes, sir.
Q. He merely followed the usual custom in the morning?
A. Yes, sir. The room was used as a family room.
152 Q. There was a parlor in the house, but that was on the floor below?
A. Yes, sir.
Q. You don't remember how long he had been there at the time Mr. Marshall came in?
A. No, sir.
Q. I mean at the time he came in there and asked her to sign that deed?
A. No, sir.

Q. Did you have any conversation with Mrs. Noble after Mr. Marshall went away about Mrs. Marshall's having signed this paper?

A. I don't remember that I did.

Q. Did you have any conversation with your cousin who was there, Mrs. Boyer—that was the one that was there?

A. Yes, sir.

Q. Then did you have any conversation with her about Mrs. Marshall's having signed that paper, this deed?

A. No, sir.

Q. When did you first, after Mrs. Marshall signed this deed, have any conversation with Mr. Noble about it?

A. I think when he came home in the evening.

Q. Then you did have some conversation about it?

A. Not about signing the paper particularly.

Q. That was what I asked you, whether you said anything to Mr. Noble about it?

A. He asked me what was the trouble with Sue and Mr. Marshall.

153 Q. I did not ask you what was said. I asked you whether you had any conversation about this deed.

A. In the evening when he came home I think we did.

Q. About this deed?

A. Yes, sir.

Q. Was there any trouble between Sue and Mr. Marshall so far as you know?

A. No, sir.

Q. When did you first have any conversation with Mrs. Boyer about signing this deed after it was done?

A. I never had any.

Q. When was your attention, after the signing of this deed, first called to the circumstances of it?

A. It was at the time when the forcible-detainer suit was being called my sister spoke to me about it.

Q. After that suit was brought?

A. Yes, sir.

Q. Up to that time your attention had not been called to the matter?

A. No, sir.

Q. So up to that time you had not talked the matter over as to what did occur that morning?

A. No, sir.

Q. Now, you say that you said to Mrs. Marsh., "Sue, you had better be careful what you sign." When was that said there?

154 A. After she had signed it.

Q. How long after she had signed it?

A. I don't know; a few minutes.

Q. Only a few minutes?

A. Yes, sir.

Q. Before or after Mr. Marshall went away?

A. After.

Q. Mrs. Noble, you were a witness in forcible detainer suit, were you not?

A. Yes, sir.

Q. A witness at the instance of Mrs. Marsh.?

A. Yes, sir.

Q. And was examined then by Mr. Paddock, her attorney?

A. Yes, sir.

Q. And cross-examined by me as representing Mr. Paxton?

A. Yes, sir.

Q. Do you remember whether at that time you said anything about her being flighty or not in her natural state of mind at the time she signed this paper?

A. I don't remember.

Q. You don't remember?

A. I don't remember; no, sir.

Q. If it is the case that you did not say anything on those subjects at that time, why did you not?

A. I was not asked, I suppose.

Q. Did those matters occur to you at that time?

A. I don't remember.

Q. You don't remember?

155 A. No, sir.

Q. Do you remember when they first did occur to you?

A. Well, I suppose they did, if I would sit down and think about her circumstances.

Q. I asked you if you remembered when the first occurred to you.

A. No, sir; I do not remember.

Q. Do you remember when your first conversation with Mr. Marsh. upon that subject occured?

A. No, sir.

Q. I mean on the subject of her having been flighty or out of her mind that morning?

A. No, sir.

Q. Do you remember when you first conversed with Mrs. Marsh. upon the subject of her having been taking morphine that morning?

A. No, sir.

Q. At the time of the trial of the forcible-detainer suit where were you living?

A. At 1822 Wabash avenue.

Q. Were you living at the same place when that suit was commenced?

A. Yes, sir.

Q. How near is that to where Mrs. Marsh. was then living?

A. I think it was about five blocks.

Q. Were you on friendly terms with her at that time?

A. Yes, sir.

Q. Did she, after the commencement of the forcible-de-

156 tainer suit, talk with you about the matter?

A. About the case?

Q. About the case.

A. Yes, sir.

Q. Did she talk with you about *the* having signed the deed at any time upon which that suit is based?

A. She asked me if I remembered her signing the deed.

Q. That was prior to the trial of the forcible-detainer suit?

A. Yes, sir.

Q. How long prior to that?

A. I don't remember.

Q. Did you have more than one conversation with her about her signing that deed—the circumstances of her signing it before the trial of the detainer suit?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Don't remember whether you had more than one conversation?

A. No, sir.

Q. But you do remember that you conversed with her about it?

A. Yes, sir.

Q. Do you recollect how long that was before the detainer case was tried?

A. No, sir.

Q. Did you have any conversation with Mr. Paddock upon the subject of her having signed that deed prior to your testi-
157 mony in the forcible-detainer case?

A. No, sir.

Q. Did you have any such conversation with Mr. Marshall?

A. No, sir.

Q. Mrs. Noble, did you or did you not at the trial of the forcible detainer case testify that Mrs. Marsh. was flighty, out of her right mind, or had been taking morphine at the time she signed this deed?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Who in the room, at the time Mrs. Marsh. signed that deed, gave any attention to the matter?

A. I don't know.

Q. Do you recollect whether the attention of any one was called to it but you own?

A. No, sir.

Q. Did any one assist in any of the preparations except yourself?

A. Not that I remember.

Q. This paper that you say you signed at the request of James M. Marshall, what did you do with it after you had signed it?

A. I did not do anything with it.

Q. Where did you leave it?

A. I didn't have it.

Q. You signed it; did you leave it there?

A. Yes, I did not take it up; I did not touch it.

Q. You signed it and left it with Mr. Marshall?

158 A. Yes, sir.

Q. For him to do what he saw fit with it?
A. Yes, sir.
Q. Do you recollect what time it was in the morning that Dr. Reed came there?
A. It was later in the forenoon, along between 10 and 11, I think.
Q. Do you recollect whether he lanced the sore which Mrs. Marshall had?
A. I don't remember.
Q. You don't remember?
A. No, sir.
Q. Do you recollect what he did while he was there?
A. No, sir.
Q. Were you in the room while he was there?
A. Yes, sir.
Q. All the while?
A. I think so.
Q. Who was the regular attendant of Mrs. Marshall at the time of her illness—Dr. Hale or Dr. Reed?
A. Dr. Hale.
Q. How did Dr. Reed happen to come that morning?
A. He was sent for.
Q. Then it was a special occasion that he came that morning?
A. Yes, sir.
Q. Was Dr. Hale also attending the children?
A. Yes, sir.
159 Q. The children were sick with the measles, were they?
A. Yes, sir.
Q. How many of them were sick?
A. One.
Q. How ill was it?
A. I don't remember particularly.
Q. So as to require constant attendance?
A. Yes, sir.
Q. How old was that child?
A. I don't remember.
Q. And you say that child was sick in a room that opened out from Mrs. Marshall's room?
A. Yes, sir.
Q. Did you say you do not remember how old that child was?
A. I do not.
Q. Don't you remember about how old it was?
A. She must have been two or three years old.
Q. Which one of the children was it?
A. It was Susie.
Q. Now, at the time that Dr. Hale was there that morning, did he also visit the child?
A. Yes, sir.
Q. Were you in the room with him when he was attending upon the child?
A. No, sir.
Q. Do you know what he did for the child?

A. No, sir.
Q. Do you know what he prescribed?
A. No, sir.
Q. Did you have any conversation with him about the child?
160 A. No, sir.
Q. Did he have any conversation with you that morning?
A. Nothing, except about Mrs. Marshall.
Q. To whom did he give the directions concerning the child?
A. I don't know.
Q. Were they given to you?
A. I think not.
Q. You don't remember?
A. No, sir.
Q. May it not have been that the directions concerning the child were given to you?
A. I think not.
Q. Who was taking care of the child?
A. My cousin.
Q. You mean that your cousin was taking care of the child and you were taking care of Mrs. Marshall?
A. Yes, sir.
Q. That was the way the labor was divided?
A. Yes, sir.
Q. Now, this morning when this deed was signed had you any knowledge that the title to this homestead on Indiana avenue stood in Mrs. Marshall?
A. No, sir.
Q. You had not?
A. No, sir.
Q. You did not know at that time Mr. Marshall had ever conveyed that property to her or for her benefit?
A. No, sir.
161 Q. When did you first know that any such conveyance as that by James Marshall to Thomas Marshall—when did you know the deed of trust from James M. Marshall to Thomas Marshall for the benefit of Susie Larmon had been made?
A. I don't know that I knew anything about it.
Q. You don't think you knew anything about it?
A. No, sir.
Q. Up to what time do you think you did not know anything about it?
A. I don't know that I know anything about it.
Q. Don't know that you know anything about it?
A. No, sir.
Q. You were present during the trial of the forcible-detainer case, were you not?
A. Part of it.
Q. Now, this morning that you say Mrs. Noble signed a paper, were you aware that Mr. Marshall had any property on Prairie avenue?

A. Yes, sir.
Q. What property did he have on Prairie avenue?
A. I don't know.
Q. How did you know that he had any property there?
A. Only from hearing them speak of the Prairie-avenue property.
Q. Had you heard him speak of other property that he had in the city?
A. I don't remember of any other.
Q. Did he say anything as to the whereabouts of the Prairie-avenue property, where it was?

162 A. No, sir.

Q. Now, as to this Indiana-street homestead, had you any knowledge about how the title did stand?
A. No, sir.
Q. Had no particular knowledge of Mr. Marshall's business affairs?
A. No, sir.
Q. Or Mrs. Marshall's property interests?
A. No, sir.
Q. Was there anything in what Mr. Marshall said that morning to particularly fasten the remembrance of it upon your mind?
A. No, sir.
Q. Mr. Marshall was at that time, so far as you knew, a man in good credit and standing?
A. Yes, sir.
Q. You so understood him to be?
A. Yes, sir.
Q. And had then no reason for disbelieving anything he might say?
A. No, sir.
Q. Were you at that time on friendly terms with Mr. Marshall?
A. Yes, sir.
Q. And so continue?
A. Yes, sir.
Q. You speak of having signed a deed at his request, and say you would have signed anything he would have asked you to?
A. Yes, sir.
Q. I suppose that continued right along, did it?
A. Yes, sir.

163 Redirect examination by Mr. PADDOCK:

Q. You have spoken, Mrs. Noble, of not having known of a deed from James M. Marshall to Thomas Marshall, in trust for the life of James M. Marshall. I will ask you whether you ever heard of such a deed?
A. No, sir.
Q. Had you any understanding, prior to the time you signed this deed in Mr. Marshall's office at his request, concerning the homestead property on Indiana avenue having been placed in some way in trust for Mrs. Marshall's benefit?

Objected to.

A. No, sir.

Q. You did not know how the title did stand, either one way or the other?

A. No, sir.

Q. Had you any conversation with Mr. James M. Marshall as to his having put the property in trust for his wife?

Objected to.

A. No, sir.

The witness, Mrs. OPHELIA K. NOBLE, being recalled for further examination on behalf of the complainant in the cross-bill, was examined in chief by Mr. PADDOCK and testified as follows:

Q. Mrs. Noble, do you know Mr. John G. Shortall?

A. Yes, sir.

Q. How long have you known him?

164 A. I think I have known him about 15 years.

Q. State whether Mr. Shortall was at the house where your sister, Mrs. Marshall, resided on the 13 or 14 of February, 1872.

A. No, sir.

Q. State whether or not he came into Mrs. Marshall's room on either of these days.

A. He did not.

Q. How well are you acquainted with the personal appearance of Mr. Shortall?

A. As well as I am with yours.

Q. Do you remember hearing him testify on the trial of the detainer suit?

A. Yes, sir.

Q. State who did, on the 13 or 14 of February, come into Mrs. Marshall's room besides the family and physicians.

A. No one.

Q. You have already testified that she did not leave her room on either of those days?

A. Yes, sir.

Q. I will ask you whether there is anything you desire to add with reference to your knowledge of a deed of trust of this homestead property in favor of your sister, Mrs. Marshall?

A. I knew that the property was for her and her children.

Q. How did you learn that; by looking at the deeds or by hearing it in some way?

A. By hearing it.

Q. When did you hear it?

A. I don't know.

165 Q. When was it in reference to the date of your sister's marriage, before or after?

A. After.

Q. Do you remember from whom you heard it?

A. No, sir.

Q. When did you hear it with reference to the time of signing this other paper in Mr. Marshall's office yourself; was it before that

that you had heard it?
A. Yes, sir.

Cross-examination by Mr. WATERMAN:

Q. Were you in Mrs. Marshall's room every moment of the day during the 14 of February?
A. No, sir,
Q. At what time were you out?
A. I don't remember.
Q. Did you go out to your meals?
A. Yes, sir.
Q. Where did you take your meals?
A. In the dining-room with the family, downstairs, on the next floor.
Q. Were you in her room every moment of the day during the 13th?
A. No, sir.
Q. Where did you take your meals that day?
A. In the dining-room.
Q. Were you in her room every moment of the time during the 15th?
A. No, sir.
Q. Where did you take your meals that day?
166 A. In the dining-room.
Q. Were you in her room every moment of the time during the 9th, 10th, 11th, and twelfth of February?
A. No, sir.
Q. Did you or not remain with her all the time during the 9, 10, 11, 12, and 13, 14, 15 of February?
A. No, sir.
Q. That is you were not?
A. No, sir; I was not.
Q. Did you take your meals with the family during those days?
A. Yes, sir.
Q. Do you recollect where you slept the night of the 9th?
A. In my own room.
Q. With your husband?
A. Yes, sir.
Q. Do you recollect where you slept on the night of the 10th?
A. In my own room.
Q. Do you recollect where you slept on the night of the 11th?
A. In my own room.
Q. I will ask you the same question as to the 12th.
A. The same answer.
Q. How was it on the 13th?
A. I was in and out of Mrs. Marshall's room.
Q. How was it on the 14th?
A. I was in and out of her room.
Q. How was it on the 15th?
A. I slept in my own room.

167 Q. Also on the 16th and 17th the same?
A. Yes, sir.
Q. Can you tell me the name of every person who called at that house on the 9th of February?
A. No, sir.
Q. Can you tell me the name of every person who saw Mrs. Marshall on the 9th of February?
A. No, sir.
Q. Can you tell the name of every person who saw her on the 10 of February?
A. No, sir.
Q. Or who called at the house on that day?
A. No, sir.
Q. Can you tell me the name of every person who called there or saw her on the 11th?
A. No, sir.
Q. On the twelfth?
A. No, sir.
Q. Do you know of your own knowledge that Mrs. Marshall did not see Mr. Shortall on the 9th of February?
A. Yes, sir.
Q. How do you know if you were not present; how could you know of your own knowledge?
A. I know she was confined to her room, and no one was allowed or admitted to see her except her family physicians.
Q. Do you know of your own knowledge that no one was admitted to her room?
A. Yes, sir.
168 Q. And you were not present?
A. Yes, sir.
Q. How do you know of your own knowledge that no one was admitted to her room?
A. Because I knew no one was allowed to go in.
Q. That is merely an inference, because there was such a restriction as to persons being admitted to her room?
A. Yes, sir.
Q. And it is a mere inference on your part that Mr. Shortall was not there at such a time, on the 9th?
A. Yes, sir.
Q. And it was so as to the other days of which you spoke?
A. Yes, sir.

Redirect examination by Mr. PADDOCK:

Q. Mrs. Noble, when you went out of the room to take your meals to the dining-room, how far was it from the front door?
A. A little further than from here to the door; should think about thirty steps.
Q. The length of how many rooms was it?
A. The length of two rooms.
Q. The parlor was the front room?
A. There are two parlors; it was the length of the two parlors.

Q. Could you hear the ringing of the bell and the opening of the front door from where you were in the dining-room?

A. Yes, sir.

169 Q. If any one had come to the front door and had been admitted to the house while you were out of Mrs. Marshall's room would you have known it?

Objected to.

A. Yes, sir.

Q. If any one had come to the front door and rung the bell and been admitted would you have heard it?

Objected to.

A. Yes, sir.

Q. How frequent were your absences from Mrs. Marshall's bedroom on the morning of the 14th of February, 1872, from eight o'clock in the morning until the midday of that day?

Objected to.

A. I don't think I was out of the room at all.

Q. Who had charge during the 13th and 14th of February, in that household, of the matter of admitting visitors at the house or receiving them?

Objected to.

A. The servant girl; I generally saw who was visiting.

Recross-examination by Mr. WATERMAN:

Q. I think you said you did not remember when Dr. Hale first called to see Mrs. Marshall?

A. No, sir; I don't remember.

By Mr. PADDOCK: Do you mean when he first called?

170 Q. Yes, when he first called, were you present on every occasion when he called to see her, Mrs. Marshall?

A. Yes, sir.

Q. Are you sure about that?

A. Yes, sir.

Q. Yet you cannot tell when he first called?

A. No, sir.

Q. And cannot tell when he last called?

A. No, sir.

Q. Nor can you tell how many calls he made?

A. No, sir.

Q. How do you know then that you were present every time that he called?

A. Because I did not go away while she was sick.

Q. Well, how do you know you were there at the same time he was; you were not present always?

A. Because he left in the morning.

Q. You inferred that he did not call while you were present?

A. Yes, sir.

Q. This Dr. Hale is he Dr. E. M. Hale?
A. Yes, sir.
Q. And he is now practicing in this city?
A. Yes, sir.
Q. Mrs. Noble, do you remember whether after Mr. Reed was there that morning Mrs. Marshall was relieved somewhat of the pain she had been suffering?
A. I think she was easier.
Q. In consequence of some operation that he performed?
A. I don't remember.
171 Q. You don't remember?
A. No, sir.

OPHELIA K. NOBLE.

Subscribed & sworn to before me this 18th day of October, 1880.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Complainant,
vs.
JAMES M. MARSHALL *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 18th day of October, A. D. 1880.

Present: George L. Paddock, Esq., of counsel for the complainant, and A. N. Waterman, Esq., counsel for the defendants in cross-bill.

ELIZABETH BOYER, a witness on behalf of the complainant in cross-bill, being first duly sworn, was examined in chief by Mr. PADDOCK, and deposes and says as follows:

172 Int. 1. Please state your name, age, residence, and occupation.
Ans. Elizabeth Boyer.
Q. What is your full name?
A. Elizabeth Boyer.
Q. Where do you reside?
A. 1535 Michigan avenue.
Q. How long have you lived in Chicago?
A. About 15 or 16 years.
Q. Where were you living in February, 1872?
A. With Mrs. Marshall, 930 Indiana avenue.
Q. Is she a relative of yours?
A. Yes; she is my cousin.
Q. Do you remember testifying in a case between Mr. Paxton and Mrs. Marshall, the present complainant, in the United States court?
A. Yes, sir.

Q. When was it?
A. In March.
Q. Of what year?
A. 1880.
Q. I will ask you, Mrs. Boyer, if you were present on an occasion, in February, 1872, when Mrs. Marshall and her husband, James M. Marshall, and others were present at their residence, 930 Indiana avenue, and a certain paper was signed by Mrs. Marshall? Were you present on that occasion?
A. Yes, sir.
Q. Please give the time when that took place—that signing—the day of the month and year, if you remember.
173 A. The 14th of February, 1872.
Q. At what time in the day?
A. Between eight and nine o'clock, I think.
Q. Will you state in your own language. Go on and state what occurred on this occasion, what was done by the parties present, who were present, and what was said.
A. Well, I remember Mr. Marshall coming in from breakfast and taking a paper out of his pocket, and asking Mrs. Marshall to sign.

(By Mr. WATERMAN: I object to any statement then made by Mr. Marshall or Mrs. Marshall.)

And I remember she did sign it, and he took the paper and put it in his pocket, and took his hat and started down town; went to the door and started down town.
Q. Who were present besides yourself?
A. Dr. Noble and Mrs. Noble and myself; I don't remember as there was any one else in the room.
Q. Can you remember anything that was said by Mr. Marshall on this occasion or by his wife?
A. I remember he said, "I wish you would sign this paper." She made some objections, but signed it; I don't remember the particulars of what was said.
Q. Do not remember the particulars of what was said?
A. No, sir.
174 Q. How long did this affair take from the time he came and spoke of the paper until he went away with it?
A. I cannot state the exact time.
Q. About?
A. I should judge but very few minutes.
Q. In what room was it?
A. In the front room, second floor.
Q. Where was Mrs. Marshall at that time?
A. She was in bed.
Q. Was she sitting up in bed or lying down?
A. Lying down.
Q. What was Mrs. Marshall's condition of health, if you know, at that time?
A. She was very sick at that time, suffering with very severe pain.

Q. How do you know she was suffering with pain; what exhibitions of suffering were there?

A. She complained; had physicians called; evidences that others show when they suffer pain.

Q. What was the nature of her complaint?

A. I think the doctor called it a fistula.

Q. What was the complaint as to there being suffering? Please describe how her complaints were?

A. She would complain of the fistula paining her so much.

Q. How long had she been sick?

A. I should judge a week or ten days.

Q. Was she sick before this time?

A. Yes, sir.

Q. Did she remain sick on the 14th of February?

175 A. Yes, sir.

Q. How long after that?

A. I should judge it was two weeks, probably, before she left her room.

Q. Do you remember whether she left her bed on that day, the 14th?

A. No, sir; she did not.

Q. You speak of doctors; what doctors were attending her?

A. Dr. Hale had been attending her, and Dr. Reed was called that morning.

Q. What was her condition the day before, on the 13th of February?

A, She was quite sick.

Q. How was it in comparison with her condition on the 14th—about the same or better or worse?

A. I think she was worse the 13th, 14th, and 15th, for a few days; she was very bad those few days.

Q. Do you know whether any one besides the members of her family and the physician were in her room on the 14th of February?

A. I know there was not.

Q. How was it as to the 13th of February?

A. No one was there that day.

Q. Do you know whether Mr. John G. Shortall was at the house on the 14th of February?

A. No, sir; he was not.

Q. Was Mr. Shortall there on the 14th of February, in Mrs. Marshall's room?

A. No, sir.

176 Q. Have you ever seen Mr. Shortall?

A. Yes, sir; I have seen him.

Q. Do you know him by sight?

A. I know him by sight.

Cross-examination by Mr. WATERMAN:

Q. When did you ever see Mr. Shortall?

A. Well, I have met him; at least he was pointed out to me a long time ago as being Mr. Shortall. I just knew him by sight.

Q. When was it he was pointed out to you?
A. I cannot tell the exact time; it was before that.
Q. How long before that?
A. I cannot tell.
Q. And you say he was merely pointed out to you by friends?
A. Yes, sir.
Q. That was the only way you knew who he was?
A. Yes, sir.
Q. What sort of a looking man was he?
A. A stout-built man, light complexion.
Q. What was the occasion of his being pointed out to you?
A. Just made the remark that [that] was Mr. Shortall.
Q. Did it make any particular impression on your mind?
A. No; I only remembered him as I would you or any one else I had seen before.
177 Q. There was nothing remarkable to impress it on your mind?
A. No, sir.
Q. What day was Mrs. Marshall taken sick on this occasion?
A. I don't remember.
Q. What day was it that she was first confined to her room?
A. I cannot remember the day.
Q. What day was it that a physician was first called?
A. He had been probably a week before that—I cannot remember the day, just the day precisely.
Q. What Dr. Hale was this?
A. He is a Doctor Hale that resided on 22d street.
Q. Is it Dr. E. M. Hale?
A. I don't know his initials; Mrs. Marshall knows.
Q. Where does he have his office now?
A. On 22d St., at his house.
Q. Whereabouts is his house?
A. Between Prairie avenue and Calumet.
Q. Where was this that Mr. Shortall was pointed out to you?
A. In a street car?
Q. How long prior to this, 1872?
A. A few months, I think.
Q. You had not introduction to him?
A. No, sir.
Q. Never have spoken to him?
A. No, sir.
178 Q. Never saw him on any other occasion than that?
A. I think I have since.
Q. Now, what day was it that Mrs. Marshall recovered from her illness so as to be able to leave the house?
A. That I don't remember.
Q. Do you remember what day she was so recovered as to be able to sit up?
A. I don't remember that.
Q. Do you remember whether a child was sick at that time or not?

A. There was one of them sick with measles.
Q. And you were in charge of that child?
A. Yes, sir.
Q. Do you remember when that child was taken ill?
A. She was taken sick during Mrs. Marshall's illness.
Q. Yes, but can you tell me the day when the child was taken ill?
A. No, sir.
Q. Can you tell me the day of the month when the child was taken ill?
A. I think, probably, the 10th.
Q. Do you remember whether it was the 10th or the 8th?
A. I don't remember.
Q. Did you have charge of that child of Mrs. Marshall?
A. Well, the rooms communicated and a part of the time the child was kept in the front room, and when she was in there
179 I was there altogether part of the time in the room adjoining.
Q. When the child was in the room adjoining you were in that room?
A. The rooms were made so as to communicate and I could see from one room to the other, so I could be in both rooms at the same time.
Q. You could not be in both rooms at the same time according to the present physical constitution of things?
A. Well, no; she would drop asleep and would be in the same room.
Q. The child would drop asleep and you would be in the room with Mrs. Marshall?
A. Yes, sir; she would, when she was asleep, be taken into Mrs. Marshall's room.
Q. When she was awake she was taken into the room where Mrs. Marshall was?
A. Yes, sir.
Q. Was the child pretty sick?
A. Yes; had quite a high fever.
Q. Who performed such offices as were necessary for the child, prepared its food, &c.?
A. The nurse girl.
Q. Who was the nurse girl?
A, I think she was called Mary; I did not know her other name.
Q. What did you do about taking care of the child?
A. Gave it its medicine, just seeing that it was kept warm, such care as it ought to have; we did not trust it to the nurse girl to go into the nursery.
180 Q. Were you in that room all the while on the 14th of February?
A. Yes; that was her sickest day.
Q. And you were not out of the room at any time during that day?
A. No, sir.

Q. Were you out of the room at any time during the previous day?

A. I don't think I was; I don't think I was on the 15th.

Q. How many days were you in constant attendance on Mrs. Marshall in that manner?

A. Those three days.

Q. Now, were you, during those three days, out of the room for a moment?

A. Never, except when Mrs. Noble was there

Q. Then you were out of the room when Mrs. Noble was there?

A. I was out to take my meals.

Q. Then you were out during the three days?

A. Yes, sir.

Q. Whereabouts did you go to take your meals?

A. Into the dining-room, on the parlor floor.

Q. Are you quite sure that there was no other occasion when you went out of the room?

A. Yes, sir.

Q. Did Mr. Marshall come home that day to dinner?

A. No, sir.

Q. What time in the morning was it when he went away?

A. About half-past eight, I think.

181 Q. What time did he get home at night?

A. Between five and six.

Q. Where did he come when he got home—right up to his wife's room?

A. Yes, sir.

Q. Was Mr. Marshall in the habit of coming home to his dinner at that time?

A. No, sir.

Q. And during his wife's illness did he do as to that just as he had been in the habit of doing before?

A. Well, I don't remember.

Q. You don't remember how that was?

A. No, sir.

Q. Do you remember whether he went to his business at his customary time?

A. I think he did.

Q. At about the usual hour?

A. Yes; I think so.

Q. And came home at the usual hour?

A. I could not say; I think so.

Q. How was he these days—the 13th, 14-, and 15th—did he go to his business about the usual hour?

A. I don't remember, except on the 14th and 15th.

Q. How was it on the 14th—did he go to his business at the usual hour?

A. Yes, sir.

Q. On the 13th, 14th, and 15th, did he return to his house about the usual hour?

A. I don't remember that there was any change.

182 Q. Do you remember at all at what hour Mr. Marshall came home on the 13th, 14th, and 15th?

A. I don't, except on the 14th; came home that day between five and six.

Q. How do you remember that?

A. I remember that it was Valentine's day, and the children were interested about it.

Q. You remember that he came home, then?

A. Yes, sir.

Q. Do you remember at what hour?

A. Between five and six.

Q. Do you remember on those days whether he came home to dinner or not?

A. I do not.

Q. Do you remember at what hour he came home on any day for a week prior to the 14th?

A. I do not.

Q. Do you remember whether he came home to dinner on the day subsequent to the 14th?

A. I do not.

Q. If he had come home that day, would you not have been pretty apt to have known it and remembered it?

A. Yes; I think so.

Q. Now, after Mr. Marshall went away, did you have any conversation with Mrs. Marshall about what had taken place?

A. No, sir.

Q. Did you have any conversation about that until afterwards?

A. No, sir.

183 Q. Did you have any up to the time this forcible-detainer suit was tried?

A. I think not.

Q. Then your attention was not called to this for a number of years afterwards up to the time when the forcible-detainer suit was tried; you were a witness in that trial, were you not?

A. Yes, sir.

Q. Mrs. Boyer, you were a single woman at that time?

A. Yes, sir.

Q. How long afterwards were you married?

A. Three years.

Q. How do you remember that it was in 1872?

A. For different reasons. I remember one is—I remember it was a year after the big fire; that is one reason particularly that I remember it.

Q. Is there any other reason?

A. Well I remember on account of some friends that had been visiting at Mr. Marshall's—things that occurred at that time.

Q. Some friends that had been visiting her prior to that time?

A. Yes, sir.

Q. Well, now, but for those two circumstances, could you have told that it was in the year 1872 at this period of time?

A. That is, those two things?

Q. Yes.

184 A. Yes, I can remember other years; I can for some other reasons; I can think of some other reasons why.

Q. You can think of some other reasons why you think it was in 1872?

A. Yes; surrounding circumstances.

Q. Well, divested of any circumstances that fix your attention to it, could you remember the date, so far as that year is concerned, of events in your life?

A. I could not.

Q. Unless there is circumstances to fasten the date you, like other people, could not remember?

A. No; I say I could not.

Q. Had you had any conversation with Mrs. Marshall that morning prior to her signing this paper?

A. Regarding that, you mean?

Q. Regarding anything.

A. Yes; had spoken to her about herself.

Q. You had talked with her about herself?

A. Yes.

Q. And she had told you about how she felt?

A. Yes, sir.

Q. About how long before this signing?

A. Early in the morning.

Q. Had you had conversations about how she felt more than once; had she talked to you?

A. O, yes.

Q. Was talking right along?

A. We often spoke of how she felt.

Q. A short time previous to her signing the paper?

A. Yes, sir.

Q. Did she speak to you as to how she felt after her husband went away?

185 A. She did at different times during the day.

Q. Did she, shortly after her husband went away, speak about how she felt?

A. I don't remember.

Q. Was she complaining a good deal; complaining of pain, telling how she felt all along in the morning?

A. O, yes.

Q. And you had talked with her more or less on that subject that morning?

A. Yes, sir.

Q. Did you have any conversation during that morning with the Dr. about Mrs. Marshall?

A. Either Dr. Hale or Dr. Reed?

Q. Yes, Dr. Hale or Dr. Reed?

A. No, sir; I did not myself.

Q. Did you have any conversation at all with Dr. Hale that morning?

A. Nothing but about the child.

Q. Do you recollect about what — he left?
A. He left different medicine—homeopathy—he left different medicine.
Q. Do you recollect what he said about Mrs. Marshall?
A. No, sir; I do not.
Q. How long was he there in the morning?
A. A few minutes.
Q. How long was Dr. Reed there when he was there?
A. But a short time.
Q. Did he lance the sore that Mrs. Marshall had?
A. I don't remember.
Q. Were you present while he was there?
186 A. I was in the room; he was by the bed; but the bed was in an alcove, and I was in another part of the room.
Q. You did not see what he was doing?
A. No.
Q. Do you remember how long he was there?
A. A few minutes.
Q. Do you remember whether she was in less pain, easier, after Dr. Reed was there?
A. I do not remember.
Q. And do not remember how long he staid there?
A. He staid there only a short time.
Q. What time of day was that?
A. Between ten and eleven, I think.

Redirect examination by Mr. PADDOCK:

Q. Were you ever present on more than one occasion when a deed was presented by Mr. Marshall to his wife and signed by her?
A. No, sir.
Q. You say that you remember that this occurred on St. Valentine's day?
A. Yes, sir.
Q. What enables you to remember that?
A. The children always had been in the habit of taking great interest in the 14th; on that day we could not give them the attention they were used to, on account of the sickness of Mrs. Marshall.
Q. Do you remember that this was after the fire of 1871?
A. Yes, sir.
Q. Where were you on St. Valentine's day of 1873?
187 A. I was there.
Q. Where were you on Valentine's day of 1874?
A. I was at Mrs. Marshall's.
Q. Where were you on Valentine's day of 1875?
A. I was married then.
Q. Where were you living?
A. I was boarding on Indiana street, 880.
Q. Then you had left Mrs. Marshall's by Valentine's day of 1875?
A. Yes, sir.
Q. Did you see Mr. Shortall at the time he testified—at the time of the trial of the forcible-detainer suit?
A. Yes, sir.

Recross-examination by Mr. WATERMAN:

Q. Mrs. Boyer, were the children in that room at the time this paper was signed?

A. I think not.

Q. Mr. Paddock has spoken of this being a deed; do you know it was a deed she signed at that time?

A. I do not, but it was spoken of as a paper.

Q. You don't know what it was she signed?

A. I do not.

Q. Do you recollect whether anything was done towards helping the children enjoy that day, Valentine's day?

A. I think Mrs. Marshall was very nervous and did not like to have them in the room, but I think they came in through
188 the back way and came into the room and had some directed, but they did not have the time they usually had.

Q. When was it that you were married?

A. In 1875.

Q. Yes, but at what time?

A. The 22d day of September. I think I have made a mistake, because I was there in 1875, too. You asked me where I was Valentine's day, 1875.

Q. by Mr. PADDOCK: I asked you if you were remaining at Mr. Marshall's Valentine's day, 1875.

A. I was.

Further redirect examination by Mr. PADDOCK:

Q. Then, with that correction, I will ask you where you remained on Valentine's day of 1876; whether at Mrs. Marshall's.

A. No, sir.

Q. I understand you to say that you remember no other occasion on Valentine's day, or any other day, except the one you have spoken of, at which Mrs. Marshall signed a paper and you were at her house?

A. No, sir; there was not.

Q. Who were present on this day?

A. Dr. Noble and his wife and myself.

Q. You did not read this paper yourself?

A. No, sir.

Q. Please state what it looked like, if you remember.

189 A. It was a paper folded as I have seen deeds before; had the appearance of a deed—of deeds that I have seen before; that is all I could say.

Q. Several folds?

A. Yes, sir.

Q. Not a mere scrap of paper then?

A. No, sir.

Recross-examination by Mr. WATERMAN:

Q. Where were you when you saw it?

A. I was in the room.

Q. Whereabouts in the room?
A. I was near the stove.
Q. What were you doing?
A. I was making a poultice.
Q. Well, were you giving your attention to the poultice or to the deed?
A. I could not help seeing what was going on.
Q. You were giving your attention to the poultice and to the deed also?
A. Yes, sir.
Q. Didn't you get the poultice and the deed somewhat mixed up?
A. No, sir; I got the poultice all right and saw the deed also.
Q. You recognized the fact that your duty was mainly with the poultice, did you not?
A. Yes, sir.
Q. And you considered it of more importance to look at the poultice than the deed?
A. Yes, sir.
Q. The deed was a matter you were not concerned about then?
190 A. No, sir.
Q. You made the poultice all right whether the deed was right or not?
A. Yes, sir.
Q. Now, where did you say you were on Valentine's day of 1876?
A. I was boarding at 880 Indiana street.
Q. Were you at home that day?
A. Yes, sir.
Q. Do you remember whether you came down town shopping that day?
A. No, sir; I was not.
Q. When did you say you were married?
A. The 22d of September, 1875.
Q. Now, this paper that — say looked like deeds that you had seen, did it resemble all the deeds that you had seen?
A. It was similar; I mean it was folded like them, and about the amount of paper, thickness, I should think.
Q. Will you describe in what way the deeds which you had seen anterior to that were folded?
A. They were folded over twice, and in length about six inches or more, and, I think, on the outside was a little soiled as though it had been handled.
Q. Now, were the deeds that you had had anterior to that composed of more sheets of paper?
A. More.
Q. Where had you seen deeds?
A. I had seen two deeds belonging to my father years ago.
191 Q. Composed of a number of sheets of paper?
A. I think so; yes, sir.
Q. Did you remember about that then?
A. Yes, sir.

Q. Did it occur to you at the time that this was like deeds you had seen your father have?

A. Similar.

Q. That occurred to you at the time?

A. I don't know that it occurred to me at that time; — has since.

Q. Describe again just how you said it was folded—this instrument.

A. It was folded over twice and about three inches wide, I should judge, six or eight inches long.

Q. And seemed to be soiled on the outside?

A. Yes, sir.

ELIZABETH BOYER.

Subscribed & sworn to before me this 18th October, 1880.

H. W. BISHOP,
Master in Chancery of the United States *Circuit Court of the United States for the Northern District of Illinois.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

192 JAMES W. PAXTON, Complainant,
vs.
JAMES M. MARSHALL *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 18th day of October, A. D. 1880.

Present: George L. Paddock, Esq., of counsel for the complainant in cross-bill, and A. N. Waterman, Esq., of counsel for the defendants in cross-bill.

SAMUEL P. NOBLE, a witness on behalf of the complainant in cross-bill, being first duly sworn, was examined in chief by Mr. PADDOCK, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Q. What is your name?

A. Samuel P. Noble.

Q. You are called a Dr. What is your profession.

A. I am a dentist.

Q. How long have you been in business in Chicago?

A. Since 1863.

Q. You testified, I believe, on the trial of this detainer suit of Paxton against Marshall, in the United States court?

A. Yes, sir.

193 Q. Were you present, Dr., on the occasion of the signing of a deed or paper by Mrs. James M. Marshall at her residence, 930 Indiana avenue, some time in February, 1872?

A. I was present that morning, the 14th day of February, when a paper—a legal paper apparently—was signed.

Q. Please state who else was present on that occasion, and what occurred—what was said by the parties back and forth on the occasion on that matter?

A. I had been to breakfast prior to Mr. Marshall; went to my breakfast and returned *and returned* and wanted to look at the paper, the morning paper, and I went into that room, as I would in the morning, and threw myself on the lounge and picked up the Tribune and was reading it. Mr. Marshall hardly ever went to breakfast until every other person had got through; he was peculiar about that, and waited until everybody had got through; he came back and went to the closet and opened the door, put his hand in the pocket, and took out a paper and says, "Sue I want you to sign that paper quick; I am in a hurry this morning." That is as near about as I could say; I could not say the very words; that is my remembrance.

By Mr. WATERMAN: Statements of Mrs. Marshall objected to.

194 Well, I was reading or looking over the morning paper and Mrs. Marshall was sick and not in very good humor, and there was some talk; it was not an unusual thing; they sometimes had considerable talk, and there was talk enough that morning to attract my attention; and I thought to myself I had better get out of the room. Finally she asked Mrs. Noble, who was writing or directing some valentines, if I recollect, at the desk; she was writing for the children; and finally she asked my wife to hand her a pen and she raised up on the bed and signed the paper; they had a book—she asked for a book—and she wrote on the face of a book; the paper was put on a book and she said, after a good deal of talk, "Thank God there is one piece of property I can't sign the deed for." That is my recollection; I remember it just as well as if it was yesterday; and he took the paper and went away, went out, and I laid there until 10 o'clock—about 10 o'clock—when I went to the office.

Q. What did this paper look like, Dr.?

A. It was a legal document, like an ordinary legal document. I supposed it was a deed or mortgage, something of the kind; I didn't know what it was.

Q. Have you stated who were present besides yourself?

195 A. Mrs. Noble, Mrs. Marshall, Mr. Marshall, two children, and I don't know whether Mrs. Boyer was in the room or not.

Q. Were they the children of Mrs. Marshall that were in the room?

A. Yes, sir.

Q. You staid there until about ten o'clock?

A. I staid there until just before ten o'clock; I had an appointment at ten with Mrs. J. M. Higgins *at ten.*

Q. Where is your office?

A. On the corner of 18th St., a frame house there which has just been sold.

Q. Are you still practicing dentistry?

A. For the last two years I have given up most of my practice; I am only working for some few friends and some patients; am in bad health.

Q. Do you know Mr. John G. Shortall?

A. I know him now; I never saw him to know him until I saw him at this forcible-detainer trial.

Q. State whether, so far as you know, Mr. Shortall was in Mr. Marshall's house the 14th day of February, 1872.

A. He was not here when I was there; I was not there until 8 o'clock; he might have been there before 7 or 8 o'clock, but while I was there he was not there; I left the house and returned at six.

196 Q. I am asking whether he was there to your knowledge?

A. No, sir; he was not.

Q. Was he there to your knowledge on the previous day, the 13th?

A. No, sir; if he was I would not have known it.

Q. You don't know that he was not there?

A. No, sir; I did not know the gentleman.

Q. State what you observed as to Mrs. Marshall's health at that time, whether she was sick, in pain, or not?

A. She was sick in bed—very much out of humor, I understood from my wife.

Q. No matter.

A. I know she was sick in bed at the time, and had been for days before.

Q. Did she remain sick for some time after that?

A. I suppose so; it was a natural consequence from what I knew.

Q. What were her actions on that occasion indicative of sickness or suffering?

A. She was suffering fearfully.

Q. What were the outward indications of that, if you know?

A. I know nothing, only what I heard was the case, but she was sick in bed, complained fearfully, and very much out of patience with everything and everybody, so much so that it was unpleasant to stay in the room.

Q. Have you given the substance of what took place on that

197 occasion—of the signing of the paper?

A. I guess so unless something was suggested.

Cross-examination by Mr. WATERMAN:

Q. You testified, Dr., upon this matter in the forcible-detainer case?

A. Yes, sir.

Q. You say the conversation between Mr. and Mrs. Marshall was somewhat acrimonious and unpleasant, and that you thought you had better get out of the room?

A. I thought of doing so; was sorry I was there.

Q. It is not pleasant to hear a husband and wife disagree?

A. No, sir.

Q. And they seemed to be having some disagreement that was unpleasant for you to listen to?

A. It was unpleasant to hear.

Q. That disagreement arose out of this paper?

A. Out of this paper, I suppose; I was reading the paper; don't know what it arose from; she was sick [and] was awfully out of humor.

Q. Do you recollect what you were reading?

A. It was the 14th day of February; no, I do not; I pledge you my word I do not.

Q. Mr. Marshall went away that morning before you did?

198 A. Yes; said he was in a hurry—"Sue, sign this paper quick; I want to be at the office this morning; I have got some business."

SAMUEL P. NOBLE.

Whereupon the further examination of witnesses in this case was adjourned to 3 o'clock p. m. of Thursday, October 21st, A. D. 1880.

Subscribed & sworn to before me this 18th October, 1879.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Complainant,
vs.
JAMES M. MARSHALL and Others, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 21st day of October, A. D. 1880.

Present: Mr. Waterman, for complainant; Mr. Paddock, for defendants.

Dr. EDWIN M. HALE, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. PADDOCK, and deposes and says as follows:

199 Int. 1. Please state your name, age, residence, and occupation.

Ans. Edwin M. Hale; residence, Chicago; occupation, physician.

Q. You practice in Chicago?

A. Yes, sir.

Q. How long have you been in Chicago in the practice of medicine?

A. 16 years.

Q. Do you know Mrs. Susan C. Marshall, the defendant in this case?

A. I do.

Q. What professional relations, if any, have you sustained towards her and her family?

A. I have been their attendant physician nearly all the time I have been here, 13 or 14 years.

Q. Have you been during all this time a general practitioner of medicine in the city of Chicago?

A. Yes, sir.

Q. Did you have professional relations with Mrs. Susan C. Marshall during the month of February, '72?

A. I did.

Q. In what way and on what occasion?

A. She was very ill from the fact of inflammation of the hemorrhoidal veins, known commonly as piles. A supperation occurred, attended with very great pain. I attended her from the 1st to the 17th of February.

Q. In that year, 1872?

A. Yes, sir.

200 Q. I will ask you whether you saw her on the 14th of February?

A. Yes, sir; I visited her every day during that time from the 1st to the 17th.

Q. Do you know or do you recollect whether you saw her on the forenoon of the 14th of February, 1872?

A. I presume I must, for this reason: on the 14th I find two visits charged, the other days one. I remember being called there very early in the morning—called up out of bed on account of the illness of a child who had the measles, and was very sick—and then there was another visit charged in the afternoon.

Q. I would like you to state with more fullness of explanation than you have yet used what was Mrs. Marshall's condition physically and mentally on the 14th of February, 1872, when you saw her, and what it — been for a few days before and for a few days after that time, distinguishing as nearly as you can the periods of time.

A. Simply this: the pain and distress and agony was such that, contrary to my usual custom, I had to resort to the use of opiates. She was under the influence of those drugs a greater part of the time, and the morning in question, it must have been that morning, the stomach was so irritable she could not retain any medicine, and I ordered an injection of opium; I have a recollection that

201 in the afternoon when I came there her sister said——

Objected to.

A. I found her in very great distress, retching and vomiting and wandering in her mind from the injection, which was a pretty heavy one, I think some 30 or 40 drops of laudanum, and such was the result I did not dare to repeat the medicine in that way; this was before the period of hypodermic injection, and I had to do the best I could.

Q. To what extent was Mrs. Marshall under the influence of opiates before the afternoon of the 14th—that is, during the forepart of the day?

A. It was that early visit that I ordered the injection and it usually takes effect in 30 to 40 minutes, so she must have been fully under the influence of opium very shortly after I was there; I cannot state the exact hour, but I know it was before breakfast.

Q. You can tell us perhaps better than we know without your statement how long a time it would take to put a patient under the influence of an opiate after it was administered?

A. As I said it usually takes from 30 to 40 minutes.

Q. Please state what effect the sickness of Mrs. Marshall had upon her mental capacity or faculties, so far as you observed the effect?

202 A. When not under the influence of morphine she was very nervous, hysterical, and irritable; in fact, there were a good many days when she was not out of the influence, and so the two conditions were very much blended together. She continually begged for more drugs, and it was difficult to keep her in morphine within bounds—that is, until the supperation occurred and the abcesses broke.

Q. Please state how, if at all, this condition affected her power of attention or fixing her mind and thought upon a subject of business, if you observed.

Objected to.

A. The usual and, you may say, the uniform effect of opium on the mind is to create confusion of ideas, a difficulty of comprehension and judgment, and the more is taken the more obtuse the mind gets.

Q. Do you recollect the frequency and amount of the opiate doses before the administration of this injection which you speak of?

A. First I usually gave it at night, but I am sure after the first days of illness it must have been given oftener. The effect of the night dose would wear off by morning.

Q. Do you remember whether Mrs. Marshall was confined to her bed during this illness or up about the house?

A. She was confined to her bed; she could not walk.

203 Q. How was it with regard to her power to walk and go about on the 14th of February, 1872?

A. I found her in bed. I cannot imagine her getting up and being about much on that day.

Q. So far as you know, she did not leave her bed, then, on that day?

A I don't know that she did.

Q. You have described the uniform effect of opiates. I will ask you whether you observed in Mrs. Marshall on the 14th of February the presence of those indications or effects?

Objected to.

A. She was delirious when I was there in the afternoon and wandering in her mind.

Q. I will ask you whether you have filled any position connected with medical instruction in the city of Chicago?

A. I have been professor in two medical colleges here all but one year since I have been here.

Q. What position?

A. Professor of materia medica and therapeutics.

Q. What institution?

A. Hahnemann Medical College and Chicago Hemeopathic College.

Q. Where did you graduate?
A. Cleveland, Ohio.

Cross-examination by Mr. WATERMAN:

Q. You were educated at a homœ-pathic college in Cleveland, Ohio?

A. Yes, sir.

204 Q. And have always been a homœ-pathic physician?

A. I have.

Q. At this time you prescribed for Mrs. Marshall you were a professor in a homœopathic college here?

A. Yes, sir.

Q. And practicing as a homœ-pathic physician in the city?

A. Yes.

Q. I understood you have been the family physician of Mrs. Marshall for 13 or 14 years and are at the present time?

A. I think it must have been as long as that.

Q. You speak of an abscess which she had, which had broken. Do you know whether it broke or was lanced?

A. It broke; I didn't lance it.

Q. Were you present when it broke?

A. No, sir.

Q. How do you know it broke?

A. By the relief from pain.

Q. How do you know it was not lanced?

A. I don't know.

Q. It may have been lanced, for all that you know; do you know that any other physician was called to see Mrs. Marshall while you were in attendance?

A. Not to my knowledge.

Q. I inform you, as a matter of fact, that Mrs. Marshall has testified that another physician was called to attend upon her, and

205 attended upon her on the 14th day of February, the day you speak of. Do you know Dr. Reed, of this city?

A. Yes, sir.

Q. What school of medicine is he?

A. He used to be called botanic.

Q. In 1872, at this time, what school of medicine was he attached to?

A. He has not changed his practice.

Q. What is known as the botanic system?

A. There are very few of that name now—they are called eclectic. Dr. Reed does not identify himself even now with the eclectics, I think.

Q. What form of piles was it she had?

A. Internal piles.

Q. Please give me the technical name of the disease she had.

A. Technically it is known as inflammation of the hemor-hoidal veins.

Q. That would be the case of any form of piles?

A. No; some are merely distentions.

Q. Does that technical description apply particularly to internal piles, such as she had, and to no other form?

A. There was an abscess of the rectum, which tended to break either outwardly or inwardly.

Q. I understood you attended her from the 1st to the 17th of February?

A. Yes, sir.

Q. Then, on the 17th, you felt it no longer necessary to attend on her?

A. I simply know my services ended that day.

206 Haven't you a recollection to know whether she recovered at that time, so it was not necessary to attend her further?

A. I suppose so, or I should not have stopped.

Q. Have you any recollection about it?

A. Not in particularly.

Q. Do you remember how she was on the 14th—whether at the crisis of her disease or recovering?

A. From the fact that I was there twice.

Q. I am not asking you to argue inferentially, but if you remember how it was on the 14th—whether at that time she was recovering or whether she was then at her worst?

A. I think it was her sickest day.

Q. Is that your recollection now?

A. Yes, sir.

Q. Is it your recollection that she began to recover from the 14th?

A. I think so.

Q. You infer from the fact that your visits ceased on the 17th that she was recovered so as to no longer need your services?

A. Yes, sir.

Q. From the 1st to the 17th were you not also in attendance on a child of hers?

A. Part of the time.

Q. Can you tell what portion of the time?

A. I could not tell you all the time.

Q. You had at that time a large practice in the city, did you not?

A. Yes, sir.

Q. And have had since?

A. Yes, sir.

207 Q. Do you remember, without refreshing your memory from any records which you have kept, what the cause of Mrs. Marshall's complaint was, and what you prescribed and did for her?

A. Yes, sir; I keep my books in a peculiar manner.

Q. I am not asking about your books, but whether you remember outside of any record you have kept.

A. I don't suppose I should outside of the record.

Q. Then, as I understand, your testimony is partly based on the examination you have made of memoranda made at the time?

A. Partly; yes, sir.

Q. May I inquire what memoranda you kept; you kept the book in which you charged for your services?

A. Yes, sir.

Q. Did you keep, as some physicians do, a little history of the case?

A. I can show you by a diagram how I kept a day-book, in which there is a column for the name, a narrow column for the number of visits, another for the disease, another for the remedy given, and another for the charge.

Q. Does that contain the name of the person?

A. Yes, sir.

Q. Have you examined that with a view to see what you did for the child at the same time?

A. No; the record merely shows she took morphine and
208 opium on that day.

Q. As I understand you your testimony is based on memoranda you kept at that time?

A. Not altogether. I have a very vivid recollection of the illness and the severity of the illness.

Q. Of the remedies which you administered, and of the general course of the disease, is your testimony based on memoranda which you kept at that time?

A. I suppose without that memoranda I should not be able to swear to the dates.

Q. Would you be able without that memoranda to tell on what particular day you visited her at this distance of time?

A. No; I should know it was in the month of February.

Q. But without that memorandum you would not be able to tell in what condition you found her on a particular day, or what you administered on a particular day?

A. I suppose not.

Q. I will thank you to bring your memorandum and let us look at it. Can you do so?

Q. Can you tell me now when you first began to administer opiates?

A. I could not state positively the date.

Q. Can you tell me exactly what quantity of opiates you administered the first day?

A. No, sir.

209 Q. Can you tell the quantity of opiates you administered any day?

A. Except by the usual doses.

Q. I do not mean what you would infer from your usual custom, but whether you remember what quantity of opiates you administered any day.

A. I know the dose required was a large one to be given.

Q. Have you a recollection of the quantity which you gave?

A. Not to the exact fraction of a grain.

Q. Did you administer any of these opiates yourself?

A. I left the powders.

Q. You did not see them given to her actually?

A. I do not know that I did.

Q. You performed no operation on Mrs. Marshall?

A. No, sir.
Q. This injection was not administered by you?
A. No; simply ordered.
Q. What time in the afternoon was it that you called there?
A. It must have been between three and six.
Q. How do you know it must have been between three and six?
A. My office hours are from twelve to three.
Q. And consequently you must have called after that?
A. Yes, sir.
Q. Why might it not have been you called later than six?
A. I don't think it was. It is my usual time for visiting patients.
210 Q. Because that was your usual time for visiting patients?
A. Yes, sir. I never go out after eight, unless I am specially called.
Q. Your hours for visiting patients at that time were from three to six, and at six you intended to be home and have your supper between six and seven, I suppose?
A. Yes, sir.
Q. How did you say you found her in the afternoon?
A. Under the influence of opium.
Q. In what condition?
A. Stupid and wandering.
Q. When you say stupid and wandering, in what way?
A. The condition we know as semi-consciousness, from which they can be aroused and seem to understand for a little while what is going on.
Q. Did you talk with her in the afternoon when you were there?
A. I don't remember any special conversation; asked her how she was.
Q. I am asking you if you remember whether you talked with her at all in the afternoon?
A. I don't remember any conversation.
Q. Do you remember whether, when you went there in the afternoon, you were told how she was?
A. I could not say. It would seem incredible to me if I did not try to talk with her.
211 Q. Therefore you think you did talk with her in the afternoon when you were there?
A. I know I must have talked with her some.
Q. I will ask you whether, from your conversation with her in the afternoon, you learned from her what her then condition was as to suffering pain?
A. I do not know that I can answer that question.
Q. Did you see in attendance there while you were there her sister, Mrs. Noble?
A. Yes, sir.
Q. You remember she was there on the morning of Feb. 14th, when you called there?
A. I think I gave her the directions about the injection.

Q. Do you remember whether she was there in the afternoon when you called there?

A. I could not say so positively.

Q. But you always found her there when you called upon her?

A. Nearly always; she was the nurse.

Q. Nearly always you found her there?

A. Yes, sir.

Q. I think you said you did not remember whether in the afternoon you had any conversation with Mrs. Noble about Mrs. Marshall's condition?

A. I don't remember.

Q Must it not have been the case that in the afternoon you learned, either from Mrs. Marshall or Mrs. Noble, how Mrs.

212 Marshall had been during the day?

A. I must have learned from one or the other.

Q. And what had been done?

A. Yes, sir.

Q. Did you learn from either of them at that time, or during the day, that any operation had been performed upon her by another physician?

A. No, sir.

Q. That abscess she had had been opened?

A. No, sir.

Q. I understood you to say, in the morning when you came there, you found her stomach in such an irritable condition you could not administer opiates in the way you had been administering them by taking them in the stomach, and consequently ordered an injection. Did she tell you as to the irritable condition in which her stomach was, as to the sickness and nausea she had experienced, or the retching which had taken place?

A. I don't remember that; I know I got the impression I could not give it by the stomach and should have to give it in some other way, and she was in so much pain I ordered an injection.

Q. Do you recollect anything that was said to you there, in the afternoon when you called, relative to Mrs. Marshall?

A. Not specially—simply about her condition.

213 Q. Do you recollect anything that was said to you on the next day, the 15th, as to her condition?

A. Not, except that she was better.

Q. Who said to you on the next day, the 15th, that she was better?

A. I don't remember anybody saying it to me.

Q. Is it not that you remember that she was better, and do not remember anybody told you so?

A. That may be.

Q. In the afternoon of the 14th that you called there, do you recollect anything that anybody said as to Mrs. Marshall's condition?

A. No.

Q. Or as to what had taken place during the day?

A. No, sir.

Q. As to the 16th and 17th, do you remember in what condition you found her, or do you remember anything that anybody said to

you, either on the afternoon of the 14th or on the 15th or 16th or 17th, as to what Mrs. Marshall's condition was, or what had been done for her or what she had been doing or taking?

A. No, sir.

Q. You do not?

A. No, sir.

Q. All that you remember as to it is, afterwards, you found
214 her better, and you find from your books that on the 17th you ceased to attend?

A. Yes, sir.

Q. You mean the 17th was the last day you visited her?

A. Yes, sir.

Q. Could you tell what time of day you visited her on the 17th?

A. No, sir.

Q. Can you tell what time you visited her on the 16th?

A. No, sir. I could not tell the hour of any day. I have no distinct recollection of any hour, except one morning very early, and I only remember that from the two visits on that day—that must have been the day I made the morning visit, as there were two.

Q. I think you said you did not remember the quantity of opiates that you ordered for her at any time?

A. I remember the injection of 30 or 40 drops, but the morphine dose must have been the quarter or half grain.

Q. You infer it must have been that without remembering it was that?

A. Certainly. I could not remember the exact amount.

Q. Suffering as Mrs. Marshall was with the piles, was there no difficulty in the way of administering an injection?

A. It would create a little more pain than usual, but it
215 could be done and is done every day.

Q. When people are suffering from the piles?

A. Yes, sir.

Q. When you called to see Mrs. Marshall during this time you were in attendance upon her, were you in the habit of talking with her and learing from her what her symptons were?

A. Yes, sir; that is the only way we have.

Q. She was in the habit of telling you from time to time how she had been since you had been there and what her feelings then were?

A. Yes.

Q. Do you remember what medicines you prescribed for her aside from the opiate? I am not asking you what, as a homœ-p-thic physician learned in the art, you must have prescribed, but whether you remember.

A. A certain kind of case is treated with certain remedies. I could not swear I gave her *nux vomica*, aloes, or any particular remedy, but I presume I did.

Q. As I understand you, you do not remember now what medicines you gave—that is, you hav-n't a recollection of giving any particular medicine at that time?

A. No, sir.

Q. I suppose you treated her according to the homœopathic regimen?

A. I treated her homœ-pathically with the exception of the opiates and morphine, which homœopaths have to resort to as we
216 would resort to any surgical operation in case of emergency. We have to subdue pain in some way; that is my practice.

Q. I understood you to say when morphine is administered the mind becomes confused, hysterical, and nervous. Is the effect of administering opiates upon all individuals alike?

A. No.

Q. Is not there a very great difference in the effect which it produces—the mental effect of the administration of morphine?

A. Yes, sir.

Q. Is not there a great difference in individuals as to the effect produced by the administration of any opiate?

A. Yes, sir.

Q. When was your attention first called since that time to this case?

A. I could not say exactly; two or three months ago, perhaps.

Adjourned to 2 p. m., Monday, October 25th, 1880.

Adjourned to Thursday, 2 p. m., October 28, 1880.

THURSDAY, *October* 28, 1880—2 o'clock p. m.

Parties met pursuant to adjournment.

Dr. EDWIN M. HALE, a witness on the behalf of the defendant, previously sworn, was recalled and his cross-examination continued by Mr. WATERMAN, and testified as follows:

217 Q. Dr., when we adjourned on October 25 it was with the understanding that when we next met you would produce your memoranda made at the time of this case?

A. Yes.

Q. Have you that memoranda?

A. I have a form of memoranda which I made about the time that I was spoken to about it first—that was the memoranda I made about the case as taken from the books (producing paper).

Q. You mean you have a memoranda which you made, which is not the memoranda which you made at the time you had the case—at the time you treated that case?

A. Oh, no; I have not that memoranda; that was in my day-book, and that was destroyed.

Q. Well, what is the memoranda which you have?

A. Well, this is the only memoranda which I took from the day-book at that time, before I went away, while the books were in existence.

Q. What has become of that day-book or of the memoranda which you took at the time?

A. Well, they were destroyed; they were sold.

Q. When was that?

A. That was in August. I left here the first of August, and it

was some time in July that I was notified that probably I should be needed on the case, and that I had better look up my
218 memoranda or what occurred then, which I did, and this is the note I made at the time.

Q. Well, you mean that this is the copy from your memorandum-book, or is this a mere memoranda that you made at the time so as to refresh your recollection?

A. Yes; it is a memoranda that I made of what I found on my book that I should want to testify to.

Q. This memoranda which you have was made in August?

A. No; the last of July, 1880.

Q. Now, Dr., outside of anything that you found upon your book, would you have a recollection whether your visits in 1872 were all to Mrs. Marshall's or whether a portion of them were to the child that you were treating there for measles?

A. I know they were sick there at the same time and that I prescribed for both simultaneously.

Q. Well, does your book show that fact, that you prescribed for both?

A. No; I do not know as it would; I think it said wife and child.

Q. Now, Dr., you have said in your testimony here that she must have been under the influence of the medicine for 30 to 40 minutes after you left. You mean by that merely if the medicine was
219 administered, if the injection was given as *as* you directed, she would have been under the influence of it 30 or 40 minutes after it was given?

A. Yes.

Q. You did not see it given?

A. No, sir.

Q. And whether it was administered you can only say by hearsay?

A. Well, I could hardly say that, because the condition I found her in [in] the afternoon would show that if they did not give mine they gave some one's. She had had opium.

Q. Yes; her condition when you saw her in the afternoon showed that she had been given opium?

A. Yes, sir.

Q. But when you could not say?

A. No, sir.

Q. When was the first information you had that Dr. Reed had been called?

A. When you mentioned it the other day.

Q. Now, do you remember whether you left a prescription that morning for what you ordered?

A. No; I do not remember whether I left a prescription or whether I said give so much laudanum.

Q. You do not remember whether you left the medicine?

A. No; I did not, because I do not carry it.

Q. So you did not leave it?

A. No, sir.

220 Q. I understood you to say, Dr., that on the afternoon of the 14th, when you called there, you gave her one-eighth of a grain of morphine?

A. I said, I supposed I must.

Q. You do not remember?

A. I see by that record that I gave her a combined powder, morphine and atrophine.

Q. Yes, but one-eighth of a grain, you judge, by this paper?

A. One-eighth of a grain of morphine and one-hundredth of a grain of atrophine; that is the composition that I used.

Mr. PADDOCK:

Q. What is atrophine, Dr.?

A. The alkaloid of belladonna; we combine it with morphine in order to prevent its action on the stomach unpleasantly; it makes the morphine go so much further.

Q. I think you said your attention was not called to this case from 1873 up to until some time this present year.

A. Yes; in looking over my testimony, made the other day, I see they have got me down as saying "two or three weeks ago." It certainly was a misslip of my tongue or something else, because I was spoken to about the time of his death.

Q. Some two or three months ago was the first time your attention was called to this case from 1872 to this time?

A. Yes, if I remember right; of course I may be mistaken.

221 Q. Now, Dr., as to the child that you attended there at the time for the measles; can you tell in what condition you found the child on any particular day?

[A.] Well, I think on one visit—and I think it was on a morning visit—the child was threatened with pneumonia; I remember that very distinctly.

Q. Can you tell when it was?

A. Well, it must have been the 14th, because that was the morning they called me so early, both on Mrs. Marshall's account and the child's account.

Q. Then you mean on the morning of the 14th you were called on the child's account as well as Mrs. Marshall's?

A. Yes. One little trivial occurrence occurred, but it serves to fix it in my mind since; the children were having valentines, which had just come in on that day, which, aside from the dates, would fix it.

Q. That was in the morning that you were there?

A. Yes, sir.

Q. Do you recollect who was there when you called in the afternoon?

A. Her sister.

Q. Was Mr. Marshall there?

A. I don't remember.

Q. Do you remember any of the children that were there in the afternoon?

A. Of course the sick child was there; I do not remember about

the others; I remember in the morning there were three or four children there.

222 Q. Do you remember who besides the children and Mrs. Noble was in the room when you were there in the morning?

A. No.

Q. Do you remember who was in attendance upon this child?

A. Mrs. Noble. She took the directions for the child and the mother.

Q. Now, Dr., at this length of time, do you remember whether you called there on the 13th of February, except from this memorandum?

A. I know I was in attendance every day for two weeks.

Q. But you would not know whether you were called on the 13th for Mrs. Marshall or the child?

A. They were both sick.

Q. But have you any recollection to-day of making any visit on Mrs. Marshall on the 13th? I am not speaking of what the memoranda induces you to think must have been the case, but whether you remember having visited Mrs. Marshall on the 13th.

A. No; I said I know of no day, except that she was very sick every day, and I prescribed every day for eight or ten days.

Q. Well, had you any recollection of it other than that she was very sick and you prescribed for her for eight or ten days?

A. No; I have not.

Q. I think you did say that you remembered that it was in the month of February?

A. That she was sick.

223 Q. Yes; I think that you said you remember that outside of your memoranda?

A. Oh, yes; I do.

Q. But what time in the month of February you would not remember outside of your memoranda?

A. Except my memory was that it was her sickest day on Valentine's day.

Q. I understand that, but aside from that?

A. Well, no; outside from my memoranda I should not know whether she was taken sick just before that or a week or two before that. But, as I said then, I have a very vivid recollection of the occurrence on that day.

Redirect examination by Mr. PADDOCK:

Q. Dr., will you be kind enough to read the memoranda about which Mr. Waterman has questioned you, so it can go into the record?

Objected to.

A. It is this, "Concerning Mrs. J. M. Marshall's suit." That is the heading. "Page 25, ledger, 1872: 18 visits in February, 2 visits on the 14th. Page 47: Entry of 2 visits February 14th. Prescribed injection of laudanum, 40 drops in the morning. Morphine

and atrophiene, one and one one-hundreth grains in p. m." I give it literally; it seems a little disconnected.

Q. I will ask you, Dr., to hand it to the officer taking the deposition in order that he may mark it for identification.

224 (Marked Exhibit A to deposition to Dr. E. M. Hale.)

Q. Something has been said, Dr., with regard to your power of recollecting this occurrence, independent of the memoranda in your books. I will ask you what is your recollection as to your custom of making entries during February, 1872, touching these points; how were they made as to time; how soon after the transactions to which they relate; what was your custom as to making your entries in your books?

Objected to.

A. I always make them in the evening when I post up my day's work.

Q. Do you recollect of any deviation from that rule of yours in regard to the entries in question in this suit?

A. No; unless I am absent during the evening, and then I fix them up in the morning.

Q. Did you make those entries in person?

A. Always.

Q. State whether or not it is your custom to make them truly and in accordance with the dates and facts and the entries themselves.

Objected to.

A. Certainly I do.

Q. In regard to this same subject of your recollecting, independent of the books, I will ask you, Dr., whether you have any recollection or any memoranda of having been paid by Mr. Marshall

225 for these services during the month of February, 1872, that you have testified about?

Objected to.

A. Only this, that he was very strict always with me by asking me to bring in my bills at the end of every month, and generally he used to pay me every month, and *I* would take a formal receipt for it. I have no personal remembrance of being paid specially for that month any more than for any other month.

Q. I will show you a paper, Dr., and see if that will refresh your recollection with regard to having been paid for the services you have testified about, rendered in February, 1872. Please look at this paper which I now exhibit, bearing date March 4th, 1872, purporting to be signed by E. M. Hale; state what it is if you recognize and identify it; state whether it aids your recollection upon the question of having been paid by Mr. Marshall.

A. That is my signature—there is no doubt about that—which would imply that I was paid for February services.

Mr. PADDOCK, counsel for defendant: [I] offer the paper referred to by the witness in evidence, and ask that it may be entered on the file

as "Exhibit B." Paper marked "Exhibit B" to deposition of Dr. E. M. Hale. H. W. B.

226 Q. Dr., can you give us some idea of the relative narcotic power of atrophine as compared with morphine; is there any way of explaining that?

Objected to.

A. By that combination in which we infer that one one-hundredth of atrophine is equal to one-eighth of a grain of morphine; that is recognized as a medical fact.

Recross-examination by Mr. WATERMAN:

Q. Dr., this memoranda which they have introduced is not one made by you at the time in 1872?

A. Oh, no; I said it was made in July, 1880.

Q. It is not even a copy of the memorandum made in 1872, is it?

A. I do not know what you would call it; I had the books before me; I made this memoranda from the books.

Q. But you did not intend to make an exact copy of the book in making that?

A. No; it is the substance of the entry in the book.

Q. Exactly what you thought to be the substance of the entry on the book relative to this case?

A. What I know to be the substance, but not the substance of the entire entry there? *A.* No, not a *verbatim* entry, because that would give every visit.

Q. But not the substance of the entire visits relative to this case?

227 A. I do not know as I could answer that—that is hair-splitting a little. A common-sense answer would, it seems to me, that I took the substance of the entries I made in order that I should not forget it when I came to testify in regard to the books.

Q. But you do not mean that it was the substance of the entire entries relative to this cause?

A. No; because that would require the entries of each day to be copied?

Mr. PADDOCK:

Q. Did I understand you to say, Dr., that you had made a careful search of your apartments here in regard to finding these books of 1872, and have failed to find them?

A. I should think I have. I have spent some 24 hours of very valuable time, in all, I guess.

EDWIN M. HALE, M. D.

Adjourned to October 29, 10 o'clock a. m.

Subscribed & sworn to before me—

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

"EXHIBIT A" to Deposition of Dr. E. M. Hale. H. W. B.

Concerning Mr. J. M. Marshall's suit.

Page 25, Ledger, 1872: 18 visits in February; 2 visits on the 14th.
Page 47: Entry of 2 visits Feb. 14; prescribed injection [of] laudanum—40 drops in morning; morph. & atrop., ⅛ & two gr. in p. m.

228 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Complainant,
vs.
JAMES M. MARSHALL and Others, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 29th day of October, A. D. 1880.

Present: Mr. Waterman, for complainant; Mr. Paddock, for defendant.

THOMAS E. MARSHALL, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. PADDOCK, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
Ans. Thomas E. Marshall; residence, 76 14th St., Chicago.
Q. How long have you lived in Chicago?
A. Since March 18, 1854.
Q. What has been your occupation during that time?
A. Railroading and carpentering; railroading most of the time—17 years.
Q. What relation, if any, was James M. Marshall, deceased, to you?
A. My brother.
229 Q. Where were you living and what was your occupation in 1860?
A. I think I was a conductor on the State-street horse cars.
Q. Living in Chicago?
A. Yes, sir.
Q. Do you recollect, some time in the year 1860, signing a certain deed with other persons than yourself named as grantors?
A. I remember signing it; but I don't remember the exact date.
Q. State the time as near as you can recollect.
A. It was way back, 1860.
Q. Some time in 1860?
A. It was some 20 years ago.
Q. I will show you a paper which has been exhibited already, marked "Exhibit B, Oct. 7, 1880," and ask you to look at it and say whether or not that is the paper to which you have just referred as having been signed by you?
A. That is my signature; as far as the contents or deed — I never read it over at all; but I remember signing it; it was a good while ago.

Q. This, then, is your signature, Thomas E. Marshall, attached to the paper shown you?

A. Yes, sir.

Q. Will you please state whether or not the paper I have shown you is the one you referred to as having been signed by you?

A. It is.

Q. Do you remember signing any more than one deed?

230 A. I do not remember.

Q. Do not remember of signing any more than one deed?

A. No, sir.

Q. I will ask you to state the place where you signed this deed, and what took place on that occasion, how you came to sign, who were present, and give the circumstances, as well as you can detail them.

Objected to.

A. I do not know exactly the circumstances, but I came to his office; my impression is he asked me to come to the office or sent to me that he wanted to see me. I came to the office, 97 So. Clark St., room No. 8, in old Larmon block, fronting on Clark St. When I got there he asked me to sign this paper. I told him I didn't want to sign anything that would do me any harm. He said it would not, and I signed it and walked out.

Q. You have said "he;" please explain to whom you refer.

A. James M. Marshall.

Q. Do you recognize the handwriting of that deed?

A. Yes, sir.

Q. Whose is it?

A. James M. Marshall.

Q. Are you acquainted with his handwriting?

A. Yes, sir.

Q. Have you seen him write?

231 A. Yes, sir; that is his writing.

Q. Was that the substance of what took place on that occasion?

A. Yes, sir; I had two or three words with him about it, and signed it and walked off.

Q. What did you do with the deed?

A. I left it right in front of him sitting at the desk.

Q. Left it with James M. Marshall?

A. Yes, sir.

Q. Who was present on that occasion?

A. I think my uncle was there, James Larmon, on the opposite side of the room, but I had nothing to do with him.

Q. Do you remember any other persons that were present?

A. No, sir.

Q. Was Mrs. Susan C. Marshall present?

A. I don't think she was. It has been a good while ago, and I never gave it any thought since.

Q. You do not think Mrs. Marshall, the wife of James M. Marshall, was present?

A. I do not think she was; might have been.
Q. Do you recollect that she was present?
A. No; I do not.
Q. Did you ever deliver this deed to Mrs. James M. Marshall?
A. I did not.
Q. Then, as I understand you, you left the deed with James M. Marshall and came away?
A. Yes, sir; on the desk, right in front of him.
232 Q. What did you do, if anything, with regard to delivery the deed to anybody?
A. Never did anything about it.
Q. What control did you exercise over the deed after that?
A. Nothing.
Q. Dropped the subject at that time?
A. Yes, sir.
Q. Did you read the deed?
A. No, sir.
Q. Did you know its contents?

Objected to.

A. Something about property. I never read the whole contents. I was in a hurry to get on the cars again. He told me it was a deed of a piece of property; something like that.
Q. Were you then actively employed by the horse-car company as conductor?
A. Yes, sir.
Q. What company?
A. Chicago City railway.
Q. The south side company?
A. Yes, sir.

Cross-examination by Mr. WATERMAN:

Q. You say you hav-n't given any thought to this matter?
A. It went out of my mind.
Q. For 20 years it went out of your mind?
A. I should say so.
233 Q. Hav-n't given any thought to it for 20 years?
A. I knew I had signed such a thing, but never was overhauled; I have been working on the Northwestern R. R. 12 or 13 years, and never was at their house very often.
Q. Nobody talked with you about this for twenty years.
A. No, sir.
Q. When was it first mentioned to you, after you did this?
A. Not a great while ago; Mrs. Marshall came to me about it.
Q. Is that the first time you had it called to your mind for 20 years?
A. Passed entirely out of my mind; didn't know that I should be overhauled some time.
Q. Never thought much about it one way or the other?
A. No, sir; I had enough to do about myself. He told me it

would not do me any harm. I supposed if it did he would see it was all right.

Q. He told you something about what it was about?

A. About a piece of property.

Q. Do you remember all he told you about the deed?

A. No, sir.

Q. Do you remember how much of the deed you read?

234 A. I did not read two lines of it; don't know I read anything.

Q. Left the deed with him for him to do what he saw fit?

A. He folded it up and stuck it in his desk.

Q. You left it there for him to do what he saw fit with it?

A. Yes, sir.

Q. You didn't think any harm would come to you from signing this?

A. I didn't know it would. I didn't have any money to pay my way out if I did.

Q. You didn't understand that it was a matter that concerned you one way or the other?

A. It was for some purpose or other that I signed it; I don't know.

Q. You didn't understand it was a matter that concerned you one way or the other, did you?

A. I might and might not.

Q. You did not think it was a matter in which you had any particular interest?

[A.] I didn't think it would do me any good.

Q. Didn't think it would do you any harm?

A. No, sir.

Q. Didn't think it was a matter you had any particular interest in?

A. He asked me to sign and I did so.

Q. I ask you if you thought this was a matter in which you had any particular interest?

235 A. I had an interest so far as his own welfare was concerned. If I could do him any good I would do it.

Q. You felt friendly to your brother and disposed to do any act of kindness you could?

A. Yes, sir.

Q. You didn't understand you had any interest in it?

A. I didn't have a cent.

Q. Nor any personal interest in it?

A. Not that I know of.

Q. You simply wanted to do whatever you could to accommodate your brother?

A. Of course I had been associated with him, more or less, ever since I came here. I went in his office first when I came here and collected rents for him, and rented houses and built sidewalks, and doing everything else necessary for the property he was agent for. Of course [I] had no ill will against him. If I had I never would have signed it.

Q. I suppose you were not aware you had any interest or title in the property described in this deed?

A. No, sir.

Q. You never made any promises or undertaking with reference to that property?

A. No, sir.

Q. Nor had anything to do with it?

236 A. No, sir.

Q. You said you did not remember whether Susan C. Marshall was present or not?

A. No, sir; I won't be positive.

Redirect examination by Mr. PADDOCK:

[Q.] I understand you to say that nothing was said by you or by Mr. Marshall in regard to what should be done with this deed?

A. No, sir.

Q. You signed it at his request and left it with him?

A. Yes, sir; supposed he knew what he was doing and all about it.

Q. Did you after that see Mrs. Marshall and say anything to her on the subject?

A. No, sir.

Q. I understand you to say that you did not then know the contents of the paper from having read it?

A. No, sir; I didn't read it, because I had been in the habit of delivering them things around the city, them great long fixtures of real estate abstracts and titles. It would take a man half a day to read one. I didn't suppose it was necessary, and he told me.

Q. You took that on trust?

A. Yes, sir.

Recross-examination by Mr. WATERMAN:

237 Q. And you left this deed with him to do what he was a mind to with it?

A. Yes, sir.

Q. You were willing he should do what he saw fit?

A. Of course.

Mr. PADDOCK:

Q. That, I understand you, was the state of your mind on the subject?

A. Yes, sir.

Q. I understand you to say that nothing was said by you as to what should be done with the deed?

A. No, sir; I never said a word.

Mr. WATERMAN:

Q. You left the deed there with Mr. Marshall?

A. Yes, sir.

Q. Did you give him to understand by your conduct at that time that he could do what he was a mind to with the deed?

Objected to.

A. No; I knew there wouldn't be anything wrong with it; I had no occasion to be uneasy about it.

Q. You expected he would do what he was a mind to with the deed?

A. I expected he would do what was right with it.

Q. You expected he would do what he thought best with it?

A. I can't say. Of course, he drew it up, or had it drawn
238 up, and it was legal business; it was all right, I suppose; I was not a lawyer.

Mr. PADDOCK:

Q. I still understand you to say that you said nothing to him by way of directing what should be done by him with the paper?

A. No, sir; never did; never opened my mouth about it; never mentioned it; never heard any mention of it since until here a little while ago.

Mr. WATERMAN:

Q. Do you remember all that you said on that occasion?

A. Yes, sir.

Q. Everything that you said?

A. Well, I might have said several little things that didn't amount to anything, but I remember the principal ones; that I didn't want to sign anything that would make any trouble for me, and he said it was all right.

Q. What reply did you make to that?

A. I told him, of course, I couldn't do anything—only sign it.

Q. You told him you couldn't do anything—only sign it?

A. My own inclination, my notion, was to sign it to get out of the office.

Q. I ask you what you said to him?

A. He asked me when I came into the office, he says to me, "Tom,
I want you to sign a paper here for me—some papers."
239 "Well," says I, "what do you want me to sign these papers for?" "Well," he says," they are legal, and they are all right, and I want you to sign them." And I says to him, "I don't want to sign anything that will get me into any trouble." And he says, "They will not get you into any trouble."

Q. What did you say then?

A. I signed the paper.

Q. I didn't ask you what you did; I asked you what you said.

A. I said then "All right" and signed the paper, of course.

Q. What did you do with the paper when you signed it?

A. I left it right on the table in front of him, on the desk.

Q. And left him there with the paper?

A. Yes, sir.

Q. He didn't go away with the paper?

A. No, sir; I left him in the office. I didn't suppose I was signing a note, and some one would come on me in a few days.

THOMAS E. MARSHALL.

Subscribed & sworn to before me this 29th October, 1880.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

U. S. Cir. C'rt, Nor. Dist. of Ills.

240 JAMES PAXTON
vs.
SUSAN C. MARSHALL. } Bill.

SUSAN C. MARSHALL
vs.
JAMES PAXTON. } Cross-bill.

In the above-entitled matters, being bill and cross-bill, it is stipulated that the time for taking evidence be extended to January 1st, 1881.

October 29, 1880.

BOUTELL & WATERMAN,
Sol'rs for James Paxton.
PADDOCK & IDE,
Sol'rs for Susan C. Marshall.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Complainant,
vs.
SUSAN C. MARSHALL, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 29th day of October, A. D. 1880.

Present: George L. Paddock, Esq., solicitor for defendant, and A. M. Waterman, Esq., solicitor for complainant.

241 AMBROSE M. READ, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. PADDOCK, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Ambrose Read.

Q. You have not been sworn on this examination, as I understand?

A. I gave my testimony.

Q. On a former occasion; but on the present occasion you have not been sworn?

A. No, sir.

Q. Mr. Waterman states that you may give your deposition, and that it may be sworn to when it is written out.

Mr. WATERMAN: Yes.

The WITNESS: Very well.

Q. You reside in Chicago, Dr.?

A. I do.

Q. How long have you lived in Chicago?

A. Since the spring of 1857—that is, I have traveled some since, just temporarily out of the State; perhaps a couple of years of that time I have spent out of the State.

Q. You are a practitioner of medicine?

A. Yes.

Q. How long have you been in practice?

A. Since 1842.

Q. Dr., were you acquainted with the family of James M. Marshall?

A. I was.

Q. Up to the time of his death?

A. Well, very nearly up to the time of his death; he called on me during his sickness.

242 Q. Were you in attendance professionally upon Mrs. James M. Marshall, who is called Mrs. Susan C. Marshall in this case, during the month of February, 1872?

A. I did attend her at that time.

Q. Do you recollect the date of that attendance?

A. Well, I recollect it through the bill. It was in the month of February; the 14th of February my bill says.

Q. Does that enable you to recollect the date?

A. The day of the week?

Q. The day of the month?

A. The bill?

Q. Yes.

A. Yes, sir.

Q. Independently of the bill, you recollect it to have been in February, 1872?

A. I don't think I should.

Q. You don't think you would?

A. I don't think I should; but the bill calls it all fresh to my mind.

Q. Now, Dr., can you identify the occasion of your visit in any other way with regard to the circumstances in which you found Mrs. Marshall? Please go on and state.

A. I remember the circumstance perfectly well; Mrs. Marshall was confined to her bed with an ulcer, and it was so situated that it was out of the question for her to sit up or stand up at that time; and I remember the circumstance perfectly well, because it was of such a peculiar nature that I had to perform an operation upon her.

243 Q. Was this the only occasion during your professional relations in which you found Mrs. Marshall in that condition?

A. That is the only occasion.

Q. Was it the only occasion during your professional relations with her that you performed any operation?

A. I never performed any operation whatever, except to examine the chest.

Q. But on this occasion?

A. But on this occasion.

Q. The examination of her chest would not be considered an operation, I presume?

A. No, sir.

Q. What was the operation on this occasion?

A. It was lancing an ulcer; opening an ulcer.

Q. To relieve the supperation?

A. To cause supperation; she was suffering intensely from it, and of course the letting out of the pus was a relief to her; there was a large quantity.

Q. Will you state, Dr., as near as you can recollect, what was the condition of Mrs. Marshall at that time, with regard to her suffering or otherwise, and in regard to her mental condition and her capacity to attend to business?

A. I saw nothing in regard to her mental condition; I know she was suffering extremely and complained a great deal.

Q. What was the nature of her suffering?

A. Lancinating pain, what any one would experience under similar circumstances.

244 Q. Caused by this inflammation or ulceration that you spoke of, was it?

A. Yes.

Q. Do you remember the time of day of your visit, Dr.?

A. Well, I don't know, sir, distinctly; I could not say whether it was in the forenoon or afternoon.

Q. Can you give us some idea of the degree of her suffering and the intensity of her complaints? Describe the situation in some way.

A. Well, sir, I could not give you any idea of it except you had a boil or carbuncle, or something of that sort; you would know very well; but to describe a person's pain or suffering is entirely out of the question; I can just simply state what I think, that the pain was intense, as persons always suffer with such a trouble.

Q. As to the complaints can you give us any idea of those?

A. Of what?

Q. Of her complaints.

A. She simply complained of the pain and suffering.

Q. How long were you present with her on that occasion, Dr.?

A. Perhaps an hour; I couldn't say; I can't recollect closely, but think perhaps I was there an hour; I know I thought it would be better to very promptly open the sore.

Q. What was your usual time for making visits?

245 A. Mine?

Q. Yes.

A. At any time when it was necessary.

Q. Do you remember being called specially on this occasion?

A. On this occasion?

Q. Yes.

A. Yes, sir.

Q. What would be your recollection as to whether it was in the forenoon or in the afternoon?

A. Well, I couldn't say whether it was in the forenoon or afternoon. I haven't any recollection about it, whether it was morning

or afternoon; the thing would have passed out of my mind if it hadn't been such a peculiar case; it called it all up fresh the moment it was spoken of.

Q. What was the effect of that ulcer or inflammation upon her ability to get up and go out of the house?

A. Well, I should judge that it would be out of the question for her to go out of the house or to get up even; it looked to me as though I should scarcely be willing to make the effort myself under such circumstances.

Q. Whom of the family do you remember seeing, Dr., on your visit besides Mrs. Marshall?

A. Well, I remember seeing a young lady by the name of Lizzie Fagan, aside from the children; I don't remember.

246 Q. Is that the lady now known as Mrs. Lizzy Boyer?

A. I believe it is.

Q. Do you remember having seen Mrs. Marshall before that time in connection with this same sickness?

A. I did not see her in connection with that sickness before that time; that was my only visit at that time.

Q. Then I understand you to say that you did not afterwards see her?

A. No, sir; I don't remember to have seen her afterwards; if I did I made no charge of it.

Q. If you did you have no recollection?

A. I have no recollection of it; it is barely possible I might have called and inquired after her; but I don't remember.

Q. You have no recollection of even that, have you, Dr.?

A. No, sir; I have not; sometimes I am in the habit of doing that sort of thing.

Q. What were your relations to the family aside from your professional ones; were they those of friendship and intimacy?

A. Always; Mr. Marshall was always a fast friend of mine up to the time of his death for ought I know.

Q. On former occasions had you been the medical attendant of the family?

A. I had; a long series of years, a number of years, for a good long while, I was their medical attendant wholly.

247 Q. For how long a period did that cover, do you suppose?

A. Well, I don't know.

Q. Quite a number of years?

A. Fifteen years, I should think; it might have been more. I know I was their physician quite a number of years. I knew Mr. Marshall soon after my coming to Chicago and attended him.

Q. As family physician?

A. I attended him before he was married.

Q. And attended his family afterwards, and was his family physician?

A. Yes, sir.

Q. Your practice, as I understand it, was a general one, was it, Dr., at that time?

A. Yes; wholly.

Cross-examination by Mr. WATERMAN:

Q. Dr. Read, from what was Mrs. Marshall suffering when you called there that morning?

A. From an ulcer.

Q. What kind of an ulcer?

A. Well, it was an inflammatory ulcer; it was accompanied by a great deal of inflammation.

Q. Well, an ulcer such as is commonly known as a carbuncle?

A. No, sir; it was not a carbuncle; it was an ulcer that was
248 evidently eating deeply into the parts, and was on the point. It would have of itself in a short time *would have* broken, I think, but then by having it opened there was great relief.

Q. Was it such an ulcer commonly known as a boil?

A. Well, more the nature of that than a carbuncle.

Q. Was she suffering otherwise than from this ulcer?

A. Not to my knowledge; I made no prescription at all; I simply opened the sore.

Q. Dr., was it daylight when you were there?

A. Yes, sir; broad daylight.

Q. It must have been after breakfast that you were there?

A. Yes. I am confident it was after breakfast, and still, as I say, would not be willing to swear it was after breakfast, but then I am confident it was.

Q. Well, then, it must have been before the lights were lighted at night also?

A. Oh, certainly; it was broad daylight when I was there; I remember distinctly in making my examination; I know it was broad daylight.

Q. At the time that you were called there did you attend upon any one else of the family besides Mrs. Marshall?

A. I have no recollection of giving any attention to any one else at that time.

Q. Have you any entry upon your books of having given any attention to any one else?

249 A. No. Unfortunately, the book in which my reports were kept at that time was lost. As I told you, I traveled some, and I took it with me for a certain purpose, and it was lost, and I was very sorry indeed, because that would have given me the whole case.

Q. Now, Dr., isn't it your impression that it was in the forenoon when you were there?

A. I couldn't say, sir; it was utterly out of my—I simply know it was broad daylight, whether morning or afternoon I could not say.

Q. If you had been called before breakfast—at as early an hour as that—would you not have remembered it?

A. Possibly I might, but then still I don't know, because it was not an unusual thing for me to be called.

Q. You say you remained there about an hour?

A. I think it was about an hour.

Q. And after the lancing of this ulcer there was relief?
A. Yes; there was relief, of course.
Q. You talked with her that morning, I suppose?
A. Yes.
Q. About her symptoms?
A. Certainly, I did. Of course, I talked with her about the symptoms before I decided what was proper for me to do.
Q. She told you what it was that ailed her?
250 A. She told me that she was suffering and where she was suffering.
Q. You say you remember to have seen Miss Fagan there that morning?
A. Yes; I remember that distinctly; she was in the habit of waiting upon Mrs. Marshall when she was sick a good deal.
Q. I think you said you didn't remember whether you prescribed any medicine for her?
A. I think I did not; I can remember distinctly; I didn't think the occasion demanded it.
Q. But I suppose you had no difficulty in learning what it was that ailed her?
A. No, sir; I could only learn by an examination—the only possible way.
Q. There was no uncertainty in your mind as to what her complaint was?
A. No, sir.
Q. Mrs. Marshall talked with you freely?
A. Yes, sir.
Q. And intelligently?
A. Yes, sir; perfectly so.
Q. Dr., you testified on behalf of Mrs. Marshall in the United States court on the trial of the forcible-detainer case between Mr. Paxton and Mrs. Marshall, did you not?
A. Yes; I gave my testimony at one time; I don't know about the technical terms you use.
251 Q. You were called as a witness by Mrs. Marshall in that case?
A. Yes, sir; I testified in that case once.
Q. And you gave your testimony concerning your visit on that occasion?
A. Yes.
Q. At the instance of Mrs. Marshall?
A. Yes, sir.

AMBROSE M. READ.

Adjourned until 11 o'clock a. m. Wednesday *morning*, November 3d, 1880.

Subscribed & sworn to before me—

H. W. BISHOP,
Master in Ch'y.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Complainant,
vs.
SUSAN C. MARSHALL, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 3rd day of November, A. D. 1880.

Present: George L. Paddock, Esq., solicitor for defendant, and A. N. Waterman, Esq., complainant's solicitor.

SUSAN E. WHEELER, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. PADDOCK,
252 and deposes and says as follows:

Int. 1. Please state your name and residence.
Ans. Susan E. Wheeler; residence, 2233 Prairie avenue.
Q. What is your husband's name?
A. William E. Wheeler.
Q. What is his occupation?
A. Oil.
Q. In the oil business?
A. Yes, sir.
Q. How long have you and your husband resided in Chicago?
A. I couldn't answer for him; I guess I have been here since 1860.
Q. When were you married?
A. Eighteen years ago last month.
Q. What relation, if any, was James M. Marshall, deceased, to yourself?
A. He was my brother.
Q. Were you living in Chicago at the time of his marriage to Mrs. Marshall?
A. Yes, sir.
Q. Mrs. Wheeler, I will show you a paper which has been exhibited before in this case and then marked Ex. B, October 7, 1880. It appears to be a deed from Thomas E. Marshall, Susan E. Marshall, and Ophelia K. Larmon, and it appears to bear date on the 18th of May, 1861—and ask you whether you identify the signature Susan E. Marshall to that paper as yours.
A. Yes, sir; that is my signature.
253 Q. Your name at that time was Susan E. Marshall?
A. Yes, sir.
Q. State all the circumstances you remember as to the signing of this deed; where it was signed and when.

Objected to.

A. I think I signed it in his office, in Mr. Marshall's office.
Q. Mr. James M. Marshall's office?
A. Yes, sir.
Q. Do you recognize the handwriting of the body of the deed?
A. As being my brother's?

Q. Yes.
A. Yes, sir.
Q. Did you see him write occasionally or frequently?
A. Very often; yes, sir.
Q. State, Mrs. Wheeler, whether you ever delivered that deed to Mrs. Marshall?

Objected to.

A. No, sir; I don't know of any one ever delivering it to my knowledge.
Q. What was done with the paper when you signed it in Mrs. Marshall's office?
A. I don't know, sir; I signed it and left it and didn't ask any questions.
Q. Who was present?
A. No one; I don't remember of any one being present.
Q. Was Mrs. Susan C. Marshall, on that occasion, present; do you recollect?
A. No, sir.
254 Q. You have no recollection that she was present?
A. No, sir.
Q. What conversation, if any, have you had since signing this paper with her about having signed this paper?

Objected to.

A. I have none; I didn't know anything about it until she said she saw my —; she wanted to know if that was my signature.
Q. When?

Objected to.

A. A few days ago.
Q. Until that time you had had no conversation with her about this paper whatever?
A. No, sir; I didn't know that it was in existence.
Q. What, if anything, did Mr. Marshall say to you as to the contents of this paper on this occasion, or as to anything else about the transaction?

Objected to.

A. Nothing at all; he asked me if I would sign the paper for him, and he said he understood it better than I did, and I signed it and asked no questions. He said for me to sign it and that was sufficient.
Q. Did you know what was in the paper?

Objected to.

A. No, sir; not a syllable.
Q. What, if anything, was said by him to you as to the
255 contents of the paper or what it related to?

(Objected to.)

A. He didn't say.

Q. I understand you [to] say that you didn't know what was in it?

A. No, sir; I did not.

Q. I understand you to say that you didn't deliver it to Mrs. Marshall?

A. I did not.

Q. You left it with her husband, Mr. James M. Marshall?

A. Yes, sir.

Q. What, if anything, did you do after that by way of communicating to Mrs. James M. Marshall that you had made this deed?

(Objected to.)

A. Not a word.

Q. So far as you know, what knowledge did she have at that time or since about the deed having been made by you?

(Objected to.)

A. I don't understand the question.

Q. I will ask it again—so far as you know of your own knowledge, what did Mrs. Marshall know of the fact that you had made this deed?

(Objected to.)

A. I don't know that she did know; I never heard her say.

Q. Then, so far as you know or have any recollection, you don't know that she knew?

(Objected to.)

256 A. No, sir; I do not.

Q. Of the deed having been made?

(Objected to.)

A. No, sir.

Cross-examination by Mr. WATERMAN:

Q. You signed the deed and left it there?

A. Yes, sir.

Q. In Mr. James Marshall's possession?

A. Yes, sir.

Q. You were willing to sign any deed that he asked you to sign?

A. Yes, sir.

Q. Without reference to what the contents were?

A. Yes, sir.

Q. You had confidence in him?

A. Yes, sir.

Q. You don't remember who was present?

A. No, sir; no one that I remember; there was no one present that I remember.

Q. You don't pretend to say that there was none present but you and Mr. Marshall?

A. I don't think that there was any one; I don't have any remembrance at all.

Q. Do you mean to say that you remember that there was no one present but you and Mr. Marshall?

A. Well, it was done in the office; there might have been people passing in and out, but no one I mean that I knew was present.

Q. You mean that you don't remember whether there were other people present or not?

A. No, sir.

257 Q. Your attention has not been called to this matter for upwards of twenty years after you signed it?

A. No, sir.

Redirect examination by Mr. PADDOCK:

Q. I understand you to say, Mrs. Wheeler, that, although there may have been persons in and out of the office at the time you signed this paper, *that* you have no recollection that Mrs. Marshall was present on this occasion.

A. Oh, no.

Q. Have you any recollection, clear and distinct, that she wasn't present?

A. Yes, sir; I know there was no one present but myself; but whether there were other persons coming in and out of the office or not I don't know, of course; but no one I knew was present when I signed it.

Q. Then it is your recollection that Mrs. Marshall was not present at that time.

A. Oh, no.

Q. Was your brother older or younger than yourself?

A. He was older than myself.

Q. What had been your actual experience in matters of land business at that time?

Objected to.

A. None at all.

SUSAN E. WHEELER.

258 Subscribed & sworn to before me this 3d November, 1880

H. W. BISHOP,

Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JAMES W. PAXTON, Complainant,

vs.

SUSAN E. MARSHALL, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 7th day of February, A. D. 1881.

Present: Mr. Waterman, for complainant; Mr. Paddock, for defendant.

THOMAS E. MARSHALL, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. PADDOCK, and deposes and says as follows:

THOMAS E. MARSHALL, a witness for the defendant in the original bill, and complainant in the cross-bill, being recalled, having been previously duly sworn, testified as follows:

Mr PADDOCK:

Q. Your name is Thomas E. Marshall.

A. Yes, sir.

259 Q. You were examined in this case on a former occasion, I believe.

A. Yes, sir.

Q. Do you remember being shown a deed purporting to be signed by yourself on that occasion when I examined you before?

A. Yes, sir.

Q. I will show you, Mr. Marshall, another deed which by inadvertance I had not perceived at that time, which I will now produce, which bears date May 25th, 1861, and purports to be signed by yourself, as grantor, and to run to Susan C. Marshall, wife of James M. Marshall, as grantee, and to have been recorded on the 14th of July, 1866, in book 351 of deeds, at page 200, in the recorder's office of Cook county. I ask you if that was your signature, Thomas E. Marshall, sealed?

A. Yes, sir.

Q. Please look at the deed and state whose handwriting is the body of it—that is, the written part.

A. That is James M. Marshall's.

Q. Your brother?

A. Yes, sir; I could tell that in Jerusalem.

Q. State what you know whether this deed was ever in the possession of Mrs. Susan C. Marshall?

A. Not that I know of.

Q. What do you know as to what was done with it?

A. All the papers I ever signed I left them right on the desk.

260 Q. Whose desk?

A. J. M. Marshall's desk. I had nothing more to do with them. As I said once before, I wanted to know what I was signing; I didn't want to sign anything that would do me any harm, and he said that was all right.

Mr. Paddock, counsel for defendant, offers the said deed, with the certificate endorsed thereon, not as evidence of any claim of any title, but as explanatory of the testimony of the witness, and asks that the same be marked "Exhibit One," which is done.

Q. What, if anything, besides leaving this paper with Mr. Marshall, did you ever do in regard to the delivery of the deed?

A. I did not deliver no papers at all to nobody.

Mr. WATERMAN: I did not hear the answer.

A. I delivered no papers to no one.

Q. Why did you sign this deed on this occasion and the other one, also?

A. Why, he asked me to sign them, and I done so; that is all.

Q. What, if any, communication had you had with Mrs. Susan C. Marshall on this subject?

A. I had none.

Q. What communication, if any, have you had with her on the subject of these deeds, of the delivery of these deeds, at any time since that time?

A. I have had none.

261 Q. So far as you know, there has been no delivery of this deed to her?

A. No, sir; not that I know of; not to my knowledge.

Cross-examination by Mr. WATERMAN:

Q. Whereabouts was it that you signed this deed?

A. On Clark street.

Q. It was executed in Mr. James M. Marshall's office, was it?

A. Yes, sir.

Q. At whose request did you execute it?

A. By him.

Q. James M. Marshall?

A. Yes, sir.

Q. The husband of Susan C. Marshall?

A. Yes, sir.

Q. After you executed it what did you do?

A. I walked right out of the office.

Q. Did you leave the deed there?

A. Yes, sir.

Q. In his custody?

A. Yes, sir.

Q. For him to do what he was a mind to with it?

A. Yes, sir.

Q. And you executed it for the uses and purposes therein set forth?

A. Yes, sir.

Q. Just the same as you did the other deed made by you concerning which you have testified?

A. Yes, sir.

262 Q. Now, you expected when you left this deed with your brother that your brother would do what he saw fit with it?

A. Well, I supposed he knew what he was doing.

Q. Well, you expected he would do what he saw fit with it, did you?

A. Of course.

Q. That was the same concerning the other deed?

A. Yes, sir.

Q. And since then afterwards you supposed he had done what he saw fit with this deed?

A. I supposed he had.

Q. And with the other two also?

A. He never mentioned anything to me about it.

Q. You saw your brother a good many times after you executed this deed and after you executed the others, did you not?

A. Yes, sir; I saw him frequently.

Q. Did you ever call any authority that you had given him about it to do what he was a mind to with the deeds or either of them?

A. No, sir.

Q. Never did; was it any surprise for you to find that these deeds had been recorded—that this deed had been recorded and the other one I have mentioned?

A. No, sir; because I had signed it once, and I supposed they had been recorded.

Q. And supposed they had?

A. Yes, sir.

Q. And you supposed that right along, did you not?

A. Yes, sir.

Q. And you had no objection to their being recorded, had you?

263 A. There was nothing said about it.

Q. Well, sir; you have no objections to their being recorded, had you?

A. No, sir.

Q. Neither of them?

A. No, sir.

Q. Now, sir, at the time you executed this deed James M. Marshall was the husband of Susan C. Marshall here, wasn't she?

A. Yes, sir.

Q. And was living with her here as her husband?

A. Yes, sir.

Q. And the same is the case relative to the other deed when you executed that?

A. I guess they were not married then.

Q. You guess they were not married when you executed the other deed?

A. No; I guess not.

Q. When you executed this the 25th day of May, 1861, were they married then?

A. I guess not.

Q. It says wife of James M. Marshall in the deed; I take it they must have been?

A. Well, I don't know; it was somewhere along in 1860 they were married; it is so long ago and I haven't given it much attention since.

Q. You haven't given it much attention for 20 years?

A. No, sir; that was some time ago; I don't expect to carry it along in my head all that time. I expected it was all right and square—everything.

264 Redirect examination by Mr. PADDOCK:

Q. Did you know Samuel Strauss, this notary public?

A. Yes, sir.

Q. Is he living or dead?

A. I won't swear that he is living, but I know that it is not a great many years ago since I saw him.

Q. Did you know him?

A. Yes, sir.

Q. Do you know whether he is living or not?

A. No; I do not.

Q. This deed purports to be in consideration of one dollar. What is the fact as to your having received any consideration for the deed?

A. I don't remember.

Q. Don't remember receiving anything for it?

A. No, sir. It has been a good while ago. I don't remember anything about it.

Mrs. SUSAN C. MARSHALL being recalled by the defendant, and having before been duly sworn, certifies as follows:

Mr. PADDOCK:

Q. You have been examined before, Mrs. Marshall, as a witness in this case, have you not?

A. Yes, sir.

Q. Have you heard the examination of Mr. Thomas E. Marshall, a witness in this case, just now made?

A. Yes, sir.

265 Q. On your former examination I overlooked a paper purporting to be a quit-claim deed to yourself and the same paper which in your presence I have just shown the witness, Thomas E. Marshall, and I now exhibit that paper to you and ask you to examine it and then to say when for the first time you saw or had knowledge of the same?

A. This is the first time I have seen it, to-day.

Q. This is the first time you have seen it?

A. Yes, sir.

Q. I will ask you whether that deed, which I have identified before, in the examination of Mr. Marshall, and which I will refer to as a deed *deed* from Thomas E. Marshall to yourself, recorded in book 351 of deeds, page 200, Cook county records, was ever delivered to you?

A. No, sir.

Q. You say you never saw it till to-day?

A. No, sir.

Q. When for the first time did you hear of such a quit-claim deed—before or after the commencement of the present case?

A. A few days ago, wasn't it, when I was here? You told me there was a deed.

Q. And before that time you had not heard of such a deed?

[A.] ——.

Q. Do you recognize the handwriting of the deed itself?

A. Yes, sir; I looked at it.

Q. It is your husband's?

266 A. Yes, sir.

Q. This deed seems to have been recorded, Mrs. Marshall, in 1866. Do you remember any transaction of your husband's at that time—what was his business at that time?

A. He was in the real estate business.

Q. To what extent was he trading in real estate at that time?

A. Oh, he used to buy and sell all the time.

Q. What authority, if any, did you give for the execution of this deed by Thomas E. Marshall to yourself?

A. None.

Q. What authority, if any, did you give for the recording of this deed?

A. None.

Q. What authority, if any, did you give your husband, James M. Marshall, to receive a delivery of this deed or the other deed that the witness, Thomas E. Marshall, spoke of?

Mr. WATERMAN: Objected to.

The WITNESS: None.

Q. What authority, if any, did you ever give your husband, James M. Marshall, to record either of these two deeds from Thomas E. Marshall to yourself?

Mr. WATERMAN: Objected to.

The WITNESS: None.

Q. What claim or recognition, if any, have you ever made of either of these two deeds?

267 Mr. WATERMAN: Objected to.

The WITNESS: None. I didn't know there was any deeds.

Q. Where did Mr. Marshall keep his land papers and important papers and documents during his lifetime?

A. I supposed he kept them in his safe; he had a large safe in his office. I never saw any of them.

Q. Did he keep them in the house?

A. No, sir. He never kept any of them there.

Cross-examination by Mr. WATERMAN:

Q. Mrs. Marshall, you have stated that your husband was in the real estate business; was he in the real estate business during the entire time of your married life?

A. Yes, sir.

Q. All the time dealing largely in real estate?

A. I suppose so. He was in the real estate business.

Q. Bought and sold a good deal on his own account, did he not?

A. Yes, sir.

Q. You were in the habit, during your married life, frequently, were you not, of executing deeds which he brought to you to execute, did you not?

A. Yes. I used often to sign my name to papers.

Q. Can you give anything of an idea how many deeds you
268 executed during your married life that he brought you?
A. No, sir.
Q. One hundred, would you say?
A. I don't know.
Q. Well, don't you think as many as a hundred?
A. Well, I cannot tell. I have signed a good many; but I could not say how many.
Q. When he brought deeds to you to sign were you in the habit of reading them over to see what was in the deed?
A. No; I just signed them. Sometimes I would and sometimes I wouldn't; but generally I just signed them.
Q. Generally you just signed them; acknowledged them as he asked you?
A. Well, sometimes I did, and sometimes I read them just one way and the other.
Q. Can you give me any one instance in which you read over any deed and *and* ascertained what was in it before you executed it?
A. No; I cannot.
Q. Now, Mr. Marshall was a capable business man, was he not?
A. Well, I don't know about that.
Q. You don't know?
A. No; I cannot say; I suppose he was.
Q. Did you during your married life carry on any business of your own?
A. No, sir; I did not.
Q. He from his earnings supported the family?
A. Yes.
269 Q. Did you ever attempt during your married life to look after yourself, your own business interests or property interests?
A. No.
Q. You left the management of business affairs to your husband?
A. Yes, sir.
Q. And you attended to the affairs of the house?
A. Yes, sir.
Q. You and Mr. Marshall lived together as husband and wife from the time of his marriage until the time of his death?
A. I suppose so.
Q. All the while in this city, I believe?
A. Yes, sir; all the while in the same place; where we are living now.
Q. I understood you to say that you never gave any directions to Thomas E. Marshall to execute this deed or the other deed?
A. I never talked to him about any business in my life of any kind.
Q. And you never in any — gave Thomas E. Marshall any directions whatever in regard to the property mentioned in either of these deeds or any of the things concerning these deeds?
A. No, sir.
Q. Never any?

A. No, sir; because I did not know there were such deeds, and of course could not.

Q. Nor did you ever give him any directions as to the property?

A. No, sir; I never spoke to him about it.

270 Q. Or as to his being trustee, or about his being trustee in any way whatever.

A. No, sir; but I knew this when I was married; it was put in trust with Thomas E. Marshall, so I could do nothing with it. I supposed that was the case, and I did not suppose anybody could do anything with it.

Q. Did you ever request Thomas E. Marshall to act for you?

A. No; he asked me if I was willing, and I said "Yes," and I supposed he was; and I supposed he was acting as trustee, and so Mr. Marshall could do nothing with it, nor I either.

Mr. WATERMAN: The suppositions of the witness are objected to.

The WITNESS: That was what I was told.

Mr. WATERMAN: And I also object to what she was told.

271 STATE OF ILLINOIS, *County of Cook:*

In the Circuit Court of the United States for the Northern District of Illinois.

JAMES W. PAXTON *vs.* SUSAN C. MARSHALL.

The deposition of JOHN G. SHORTALL, a witness on behalf of the complainant in the above cause, taken, by agreement of counsel, before Charles Scates, a notary public in and for said county and State, on the 8th day of December, A. D. 1880, at the office of Boutell & Waterman, room 19, No. 88 La Salle street, Chicago, Cook county, Illinois.

Present: A. N. Waterman, Esq., for complainant, and Geo. L. Paddock, Esq., for defendant.

DECEMBER 8TH, 1880—2 p. m.

Parties met pursuant to adjournment. Whereupon JOHN G. SHORTALL, a witness produced, sworn, and examined on behalf of the complainant, testified as follows:

Direct examination by Mr. WATERMAN:

Q. What is your name, age, residence, and occupation?

A. My name is John G. Shortall; age, 42; residence, Chicago.

Q. Where were you living in January and February, 1872?

A. On Prairie avenue, between 16th and 18th streets.

272 Q. In what business were you then engaged?

A. Examination of titles to real estate.

Q. In the abstract business?

A. Yes, sir; in the abstract business.

Q. How many firms were there in the city at that time engaged in that business?

A. Besides our own concern there might have been one or two others, but I don't remember.

Q. Mr. Shortall, did you know James M. Marshall in his lifetime?

A. Very well, sir.

Q. When did you first become acquainted with him?

A. In 1858.

Q. And knew him from then up to the time of his death?

A. Yes, sir.

Q. Do you know Susan C. Marshall?

A. Yes, sir.

Q. How long have you known her?

A. I cannot say exactly, but perhaps in the neighborhood of that time.

Q. Do you know where James M. Marshall lived in February, 1872?

A. Yes, sir.

Q. How near was that to where you were then living?

A. You might call it three blocks away.

Q. Where was your office at that time—your place of business?

A. I think 493 Wabash avenue, if it was before we moved on the west side.

273 Q. At that time, in February, 1872, in going from your place of business to your residence by the ordinary means of conveyance, would you go past where Mr. Marshall then lived?

A. Well, I would go within a block of it; that is, I would leave the cars at the corner of Indiana avenue and 18th street and he lived on Indiana avenue, between 18th and 20th.

Q. Were you a notary public in February, 1882?

A. I was.

Q. Mr. Shortall, will you look at the certificate of acknowledgement on the deed of trust now shown you, which is dated the 13th day of February, by Susan C. Marshall and James M. Marshall to Lyman Baird, marked Exhibit A to Francis Bradley's deposition, (handing paper to witness); look at that certificate of acknowledgement and say whether you can tell by whom it was made?

Mr. Paddock, counsel for complainant in the cross-bill, desired to object to any testimony of the witness tending to support the certificate of acknowledgement referred to in the question for the reason that the bill of complaint concedes the existence of the homestead rights and offers to satisfy the same in money.

A. It was made by me.

Mr. WATERMAN:

Q. When?

274 A. It bears date the 14th of February, 1872, and, I presume, there is no doubt of it having been attached at that time.

Q. Will you please state whether the persons named therein, James M. Marshall and Susan C. Marshall, did or did not appear before you, as stated in the certificate, and acknowledge that instrument.

Mr. Paddock, counsel for defendant in the original bill and complainant in the cross-bill, objects to the form of this question for the reason that it is leading, and that it does not call for a statement by the witness of any transaction which took place at the time indicated.

A. Both parties acknowledge the execution of the instrument to me, either on the said 14th of February or on the evening next preceeding.

Mr. WATERMAN:

Q. Mr. Shortall, have you any personal recollection at the present time of actually taking that acknowledgement?

A. I cannot say that I have; that is, I cannot identify in my memory the taking of this particular acknowledgement, but I have a distinct recollection of taking an acknowledgement, one or more, at the house of Mr. Marshall, in compliance with his request.

Q. Well, of taking the acknowledgement of whom at the house of Mr. Marshall?

275 A. Of Mrs. Marshall, of course.

Q. Mrs. Susan C. Marshall?

A. Mrs. Susan C. Marshall; the plea always being that it was inconvenient for Mrs. Marshall to come to the office, although I have taken her acknowledgement of deeds at the office also frequently.

Q. At this time, in February, 1872, and along about that time, were you in the habit of taking many acknowledgements of deeds?

A. Not many, sir.

Q. If you have no personal recollection of taking this particular acknowledgement, how do you know that Mr. and Mrs. Marshall actually appeared before you and acknowledged that instrument?

A. Because I never certified knowingly to a lie in my life.

Q. Do you mean that you have never certified, in a certificate of acknowledgement, that any one appeared before you and acknowledged an instrument unless they actually did so appear?

A. Never, sir.

Q. Have you ever been asked, Mr. Shortall, to certify to persons having acknowledged deeds without having them personally present?

Objected to as being evidently irrelevant and foreign to the present purpose.

A. Yes, sir; a few times; not often.

Q. Well, what have you done in such instances?

276 A. Refused to do so.

Q. Mr. Shortall, you have testified concerning this acknowledgement before, haven't you?

A. Yes, sir.

Q. In a suit wherein Mrs. Marshall was a party?

A. I believe so.

Q. How long ago was that?

A. I don't remember, sir; somewhere in the neighborhood of [a] year ago.

Q. Since testifying in regard to this matter have you thought of it?

A. Oh, yes, sir.

Q. Please state whether you have now, upon thinking the matter over, any doubt whatever as to the fact of Mr. & Mrs. Marshall having appeared before you and acknowledged that instrument?

A. Not the slightest.

Q. Mr. Shortall, can you give any instances in which you have been asked to take acknowledgements of instruments without having persons actually present before you?

Objected to as being evidently irrelevant to the present issue.

A. I remember distinctly of three cases in which I have been so requested, of which Mr. Marshall himself was one; the other two I decline to name.

277 Q. Whose acknowledgement did Mr. Marshall ask you to make the certificate to without the person being actually present?

Objected to.

A. His wife.

Q. When was that?

A. I can't remember.

Q. What did you do?

A. I refused to do so, but probably went to the house and took the acknowledgement; certainly did so if I attached my certificate.

Mr. Paddock counsel for defendant, objects to Mr. Shortall stating the probabilities concerning this matter or what he did in any contingency whatever, or making any other statement than a statement of fact based upon his own recollection.

Mr. WATERMAN:

Q. Mr. Shortall, I now show you an abstract of title made by Shortall and Hoard, being number 24222, which will be marked Exhibit A to deposition of John G. Shortall, and I ask you by whom that abstract of title was made (handing paper to witness)?

A. By our firm; Shortall and Hoard.

Q. When was it made?

A. On or about the 16th February, 1872.

Q. I call your attention to the fact that that is a partial abstract of title to this property.

A. I see that, sir.

278 Q. Please state, Mr. Shortall, when that abstract of title was made, with reference to your taking the acknowledgement of that deed of trust.

A. It was made subsequently some three or four days.

Q. Do you remember, Mr. Shortall, whether this deed of trust was placed on record by you—that is, I mean by your firm?

A. I don't remember that our practice was——

Counsel for defendants object to the witness, when called up in regard to his memory of the fact, *to* state- anything in regard to his practice.

Q. Please go on and state what you was going to in regard to your practice.

A. Our practice was to receive from Baird and Bradley, and from other clients in the loaning business, the trust deeds which were to be filed in record for the purpose of making the abstract of the instruments in our office as more convenient, and then we would file the instruments for record for those clients and bring the abstract down so as to include them, and this was probably so filed, but the fact, as I said, I cannot positively state.

So much of the answer as states Mr. Shortall's opinion as to the probability of what was done objected to.

Q. How long had you, in 1872, been in the abstract business here in this city?

279 A. About 16 years.

Q. Were you at that time familiar with the records — of making abstracts of title in this city?

A. Yes, sir.

Q. Please state whether at that time you were an expert in the abstract business.

A. I was so considered.

Q. Please don't be modest, but answer the question whether you were.

A. That was my profession.

Q. Now I call your attention to the fact that upon that abstract of title where this trust deed is shown nothing whatever is said about the acknowledgement. Please state whether in making up abstracts at that time, when there was any defect in the acknowledgement or any want of acknowledgement known to you, it was your custom to show it upon the abstract.

A. Invariably.

Q. Then, in respect to this deed of trust having been duly acknowleged, what does that abstract show?

A. It shows that it was duly acknowledged.

Answer objected to by counsel for defendant for the reason that the witness is undertaking to construe a written paper which has been offered in evidence by counsel on the other side.

Q. Mr. Shortall, will you please state whether in the course

280 of your business as an abstract maker you have ever made an abstract of title to property showing conveyances thereof of which to your knowledge there had not been a lawful or proper acknowledgement without so showing it upon the abstract?

A. Never.

Q. Please state whether, if at the time this abstract of title was made by you you had known that the deed of trust last shown thereon had not been duly acknowledged by the parties named

therein having actually appeared before the officer claiming to take the acknowledgement and acknowledge the same, you would have made the abstract of title you did.

A. We would have made the abstract of title, but we would have added a note of the defect to the abstract of the instrument.

Q. You were acquainted with Baird and Bradley at that time, in February, 1872?

A. Yes, sir.

Q. Doing business with them?

A. Yes, sir.

Q. How long had you been doing business with them?

A. I cannot say; for some years.

Q. Some years?

A. I really can't say, sir?

Q. In what business were they engaged?

A. I should say mortgage loan brokers.

281 Q. Were they men who had much or little business to be done by abstract makers?

A. I think considerable, sir.

Q. Where was the office of your abstract firm prior to the fire of 1871?

A. In the building known as Larmon block, northeast corner of Washington and Clark streets.

Q. Do you remember whether Baird and Bradley did business with you while you were there?

A. Oh, yes, sir; they did.

Q. Mr. Shortall, will you please state in whose handwriting the letters and words "J. G. Shortall" in the body of the certificate are?

A. In my handwriting.

Q. What other portion of the certificate other than your signature to it, if any, is in your handwriting?

A. The words "14th" and "February."

Q. Will you please look at that abstract of title and say whether the entire abstract was made by your firm?

A. Yes, sir.

Q. I call your attention to the certificate bearing date January 30th, 1872, and ask you about what time that was made?

A. At about the date stated, January 30th, 1872.

Q. Have you any recollection at whose instance the con-

282 tinuation dated January 30th, 1872, was made?

A. The order was entered on the order-book in that case, as in the other, in the name of J. M. Marshall.

Cross-examination by Mr. PADDOCK:

Q. Mr. Shortall, the certificate of acknowledgement to which you have referred bears date February 14th, 1872, does it not?

A. It does; yes, sir.

Q. That date was inserted in your handwriting, wasn't it?

A. Yes, sir.

Q. Intelligently, I presume, and with knowledge of the fact that that was the proper date, so far as you recollect?

A. That was the day I attached the certificate, undoubtedly.

Q. The 14th of February?

A. Yes, sir.

Q. It was your official statement of the day on which the act of acknowledgement was, — it not?

A. It was the date attached to the certificate.

Q. And you attached it?

A. And I attached it.

Q. I am now asking you whether it was your statement of the actual, truthful date of the acknowledgement itself?

A. Well, I cannot say positively that I took the acknowledgement; that is, that the acknowledgement of Mrs. Marshall
283 was made on that date, for it might have been—although I am not certain about it—it might have been made the evening previous. If I took the acknowledgement at her house the evening previous I should be likely to attach the date to it that Mr. Marshall would acknowledge it, which would be the next day when he brought the instrument down there. That is the fact of the matter.

Q. To ascertain, if I can, whether you are speaking from recollection or simply theorizing with regard to your system, I will ask you when that deed was acknowledged.

A. I should say, in the absence of any positive recollection to the contrary, that it was acknowledged on the 14th of February.

Q. You have now stated that it was acknowledged on the 14th of February. I will ask you if you have any memory as to where it was acknowledged?

A. I have not.

Q. I will ask you whether you have any memory of having gone to Mrs. Marshall's sick chamber and taken her acknowledgement on the 14th day of February, 1872, of that deed?

A. I never went to Mrs. Marshall's sick chamber at any time to take her acknowledgement; I never was in Mrs. Marshall's chamber properly so called to take an acknowledgement.

284 Q. Then is it not true to say, Mr. Shortall, that treating the matter as a matter of memory you have no memory of having visited Mrs. Marshall's house while she was sick and confined to her room on the 14th of February, 1872, and taken her acknowledgement to this deed?

A. I have stated positively that I never visited Mrs. Marshall's bed-room, if that is what you mean, to take any acknowledgement whatever; I have visited Mrs. Marshall's house and taken her acknowledgement in her parlor to possibly this deed—possibly some other deed—in the evening after 6 o'clock.

Q. I will ask you again whether you have any memory, Mr. Shortall, of having proceeded to Mrs. Marshall's house on the 14th of February, 1872, and taken her acknowledgement to the deed in question without reference to other deeds.

A. As a matter of memory I have no recollection of taking the acknowledgement of any particular deed—meaning by that that I

cannot identify any deed the acknowledgement of which has been taken by me at her house.

Q. Then, is it not fair to say that you cannot recollect having gone to her house and taken her acknowledgement to this very deed, the one we are talking about.

A. Why, certainly.

Q. Your testimony, as I understand it, is based not upon
285 actual personal memory of this particular transaction, but rather upon your confidence in the accuracy of the system of official action which you pursue. Is that a correct statement of it?

A. I think it is, sir.

Q. Have you had some personal feeling with regard to this controversy as if it was levelled to some extent against the regularity and propriety of your own contract? Have you felt that sentiment or expressed some sentiment of that sort, Mr. Shortall?

A. Oh, no, sir. I have felt too secure in my position in my practice.

Q. You have no particular personal feeling about this controversy?

A. Oh, no, sir.

Q. You have spoken about being occasionally approached by people who asked you to give certificates without the parties coming before you?

A. Yes, sir.

Q. How often did that occur?

A. Perhaps half a dozen times.

Q. Your business of notarial acknowledgements was not a large one, I understand you to say?

A. No, sir.

Q. It was only occasionally that you were called upon?

A. Only occasionally.

Q. Mr. Waterman showed you the abstract which has been termed Exhibit A and you stated, I believe, that it was made by your firm, Shortall and Hoard?

286 A. Yes, sir.

Q. Do you mean that you recollect having taken part in the making of the abstract?

A. No, sir.

Q. You recognize it by its official marks?

A. Yes, sir. I recognize it by its official marks.

Q. And the signature to it?

A. Yes, sir.

Q. What personal part did you actually have in making that abstract?

A. I cannot tell you the exact part, sir, but I made part of it myself. I should say I made the most of it myself.

Q. Is your handwriting there in the body of it?

A. That is a copyist's work

Q. What is your reason for saying you had any personal share in the work?

A. From the office marks on it.

Q. What are the office marks to which you allude?

A. My initials, for one thing, at the head of the abstract in my own handwriting.

Q. That would imply what, Mr. Shortall?

A. It would imply the making of the abstract by myself; certainly the particular charge of its making.

Q. Would it imply that you went to the recorder's office and made the examination of the records of deeds?

A. It would, sir.

287 Q. You have spoken about a practice, Mr. Shortall, of receiving a deed of trust to be filed by your firm for record. Was not that practice confined to cases where it was designed that the deed of trust should be placed upon record and the abstract should be brought down with a certificate to date showing a deed of trust and the disbursements of the loan to be made after that continuation was in hand at a loan office?

A. No, I cannot speak anything about the loan office, or how they transacted their business. I have stated that the practice was to hand us the deed in trust for us to file for record and we to bring down the abstract—continue the abstract to cover the day of the filing. What the practice of the loan broker was we have no knowledge as to the disbursements of his money.

Q. You say probably this was so done—that is, probably, you say, this deed of trust was sent to your firm, and probably your firm filed it for record?

A. Yes, sir.

Q. I will ask you whether you have the slightest memory on that point?

A. Not the slightest, sir. I judge from what was the almost universal practice.

Q. If your firm did place this deed of trust on file for record, from whom did they obtain it?

A. Well, I should say from Baird and Bradley, but it might have been handed in by Marshall, or by some clerk, for

288 Baird and Bradley.

Q. I do not understand you to profess to have any personal memory as to by whom it was handed in?

A. No, sir; I have not.

Q. Your attention has been called by Mr. Waterman to the fact that in the abstract shown you nothing whatever is said about the acknowledgement. Was there any custom in your office at that time of mentioning facts that did not appear on the records of Cook county?

A. Not unless we knew them; and as our dealings were mainly with the records, it was very rarely that facts outside the records came to our knowledge, but when they did so we noted them.

Q. Such as what?

A. Anything that would operate as a defect or informality in the deed or instrument abstracted.

Q. Where the fact itself was not to be found upon the records?

A. Yes, sir.

Q. Will you give an instance of that, so we can understand your meaning?

A. I cannot, sir; a hypothetical case?

Q. No, sir; a case based on facts.

A. I have no recollection of any such, sir.

Q. Then you have no recollection, as I understand you, Mr. Shortall, that the firm of Shortall and Hoard ever mentioned
289 in an abstract of title a fact they had not previously found upon the records of Cook county?

A. I cannot recall any case.

Q. The object of your firm was to give abstracts of title based upon matters in writing, apparent upon the records, concerning lands in Cook county, was it not?

A. That was the object certainly. I would say in addition, in explanation, that if a deed appeared on the records which we knew to be a forgery, or in which a defect occurred which was not made a matter of record, we, knowing it, would make a statement for the benefit of our client to the effect that such a defect existed.

Q. With this explanation in view I will ask you, Mr. Shortall, if you remember any case where you made a statement of facts which did not appear on the records, and, if so, state what the case was.

A. I have no recollection, sir, of any case—none that I can name—although I have a general recollection of having made statements on abstracts, in addition to what the record showed, of information obtained outside the record. This was very infrequent, however.

Q. That bears upon your routine of business with regard to your capacity as abstractors of title. I will ask you a question in regard to your notarial business—whether in taking an acknowl-
290 edgement of a deed it was your custom to read the deed?

A. Not generally, sir.

Q. It was not much of an operation, was it, for a party to come in and sign a deed and acknowledge it, and you put your certificate and seal upon it. How long would that take?

A. Something under five minutes.

Q. Wasn't your custom not to read the deed to which you made certificates of acknowledgement?

A. I generally glanced at the deed in a general way, but it was not my practice to read the deed through.

Q. It was not a matter in which you had any interest, was it, to see what the consideration was?

A. No, sir.

Q. What the property was?

A. No, sir; it was more to identify the parties taking the acknowledgement as being the parties named in the body of the deed.

Q. If you knew the party to be the party named as grantor that was all you attended to, I suppose?

A. That was all, sir.

Q. Please instruct us in one additional point with regard to the mysteries of abstract making, Mr. Shortall, and tell us whether

the basis of the whole affair was not a tract index kept in
291 your office. Is that the starting-out point?

A. Yes, sir.

Q. A page, or some part of a page, designates a tract, and there is a list of conveyances upon it, isn't there?

A. Yes, sir; a sort of ledger account.

Q. That is the skeleton upon which you work, as I understand it, or from which you begin to work?

A. Yes, sir.

Q. So far as deeds of conveyances are concerned?

A. Yes, sir.

Q. Now, is it not also true that this tract index furnishes no information as to the name of the notary before whom the deed is acknowledged?

A. That is true, sir.

Q. Was it not also at that time true, in 1872, that if the person making the search of the records saw on the face of the acknowledgement nothing unusual he would not make any note of the name of the officer before whom the deed was acknowledged in the abstract?

A. That is true, and always has been so.

Q. If the acknowledgement appeared to be in due form by a person known to be an officer there would be no mention in the abstract of the name of the person taking it. That is correct, isn't it?

A. That is true.

292 Q. You have spoken of your clients in a general way without saying who they were in this case. Let me ask you, Mr. Shortall, if Mr. Marshall did not give the order for this abstract, and was it not paid for with his funds?

A. I should say, from the appearance of the abstract, that Mr. Marshall paid for the abstract, and it was probably ordered in his name for that purpose, for I think we had an account with him, a monthly account, at that time.

Q. It appearing, therefore, that Mr. Marshall was the person by whom, or in whose name, the order for the abstract was given—that he was the person by whom your firm was paid for making it—I will ask you to whom you referred when you spoke of your clients?

A. All who did business with us—Mr. Marshall and Messrs. Baird & Bradley and others—all who did business with us.

Q. Did you refer to Baird and Bradley as your clients in this instance with regard to this abstract?

A. Considering the fact of the recording of the trust deed——

Q. If it is a fact?

A. If it is a fact we would consider that Baird and Bradley
293 were interested, so far as we were concerned, fully as much as Mr. Marshall, and were so considered our clients in that regard.

Q. Then the fact of Baird and Bradley's clientage depends, as I understand you, upon the hypothesis that they put their deed in your hands to be recorded?

A. Oh, not exactly, sir; the fact of its being on the search of title

would give us notice of it independently of their having left it with us.

Redirect examination by Mr. WATERMAN:

Q. I will ask you whether the form of this trust deed also would not have informed you that it was from the office of Baird and Bradley?

A. Oh, yes, sir.

Q. I will ask you whether the abstract of this trust deed does not show it to have been made prior to the instrument having been spread upon the records of Cook county?

Objected to.

A. It does.

JOHN G. SHORTALL.

By agreement of counsel the signature of the witness to the foregoing deposition was waived.

STATE OF ILLINOIS, } ss:
Cook County, }

294 I, Charles Scates, a notary public in and for said county and State, do hereby certify that previous to the commencement of the examination of said witness, John G. Shortall, he was by me duly sworn in the cause entitled in the caption hereto; that said examination was had on the 8th day of December, A. D. 1880, at the office of Boutell & Waterman, room 19 La Salle St., Chicago, in said county and State; that I caused said examination to be reduced to writing, and that the signature of the witness to said examination was waived by agreement of counsel.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 8th day of February, A. D. 1881.

[NOTARIAL SEAL.] CHARLES SCATES.
Notary Public.

(Endorsed:) Filed May 3, 1882. W. H. Bradley, cl'k.

295 *Deposition of Carter H. Harrison.*

JAMES W. PAXTON *vs.* JAMES M. MARSHALL *et al.*

JAN'Y 11TH, 1881—2 o'clock p. m.

Parties met pursuant to adjournment. Whereupon CARTER H. HARRISON, a witness produced, sworn, and examined in behalf of the complainant, testified as follows:

Direct examination by Col. WATERMAN:

Q. What is your name, age, residence, and occupation?

A. Carter H. Harrison; mayor of the city of Chicago; lawful age; city of Chicago.

Q. Mayor Harrison, how long have you lived here in this city?

A. 25 years.

Q. Will you look at the description contained in number 9 of the

abstract now shown you, which is abstract number 24222, by the united firms of Shortall & Hoard, Chase Bros. & Co., and Jones & Sellers, and say whether you remember ever having owned the property described in number 9 of that abstract?

A. Yes, sir; I owned that at one time.

Q. Do you remember selling the property?

296 A. Yes, sir.

Q. To whom did you sell it?

A. My recollection is I sold it to Joseph N. Barker.

Q. Do you remember whether you took back a mortgage or not?

A. I did. He subsequently sold part of it to Mr. Marshall.

Q. Now, do you recollect when that mortgage, if ever, was paid off?

A. I would have to refresh my memory, probably, by looking at the abstract.

Q. Look at the abstract.

A. (Witness examines paper.) It would be impossible for me to fix the exact date. I should say, though, between 1861 and 1863—somewhere along there—or 1864.

Q. Now, Mayor Harrison, when did you sell the property to Mr. Barker?

A. I sold it in 1857 or 1858, I think. I got it from Mr. Allen in about 1857, I think—1857 or 1858. I sold it to Mr. Barker, my recollection is, by contract, but didn't make the deed for some time afterwards. I sold it after I had held it a year or two, or three years. Somewhere between 1858 and 1860 I sold it to him, and the hard times had commenced, and property fell, and the lot was supposed not to be worth the money that I received for it, so that I had to make a reduction, and they paid me off. I would, therefore, think that this payment must have been during the hard times—

297 somewhere in 1861 or 1862; it was before —. I know in about a year after I made the settlement with them property took a start, and I went to them and told them that, as I had done so well for them, I thought they ought to make it up in notary public acknowledgments for me, and I never did pay either one of them after that; so I judge from that it was somewhere near 1861 or 1862 they paid me, and good times began to return in 1863.

Q. Was the mortgage you took from Mr. Barker for the purchase-money?

A. For purchase-money; yes, sir.

Q. Now, do you recollect what the amount unpaid upon the mortgage was at the time it was paid off?

A. I could not tell you.

Q. Do you recollect for what amount the mortgage was taken?

A. I could not tell you precisely; it was some $5,000, I believe.

Q. Now, Mayor Harrison, at the time the mortgage was paid off did you receive the full amount of the mortgage?

A. I accepted it as full.

Q. But actually did you receive the full amount of the mortgage?

A. No; not quite.

Q. Why was that?

A. I had sold the property for about $5,000. Before the
298 money was paid to me, before the debt finally became due, the property had fallen very largely by reason of the beginning of the war. The property was not supposed to be worth the debt. Mr. Marshall purchased part of it; my recollection is all but 15 feet, it seems to me; this is from memory. It seems to me Mr. Marshall purchased 40 feet from Mr. Barker and Mr. Barker retained the 15 feet out of the 55 feet and something. The debt was greater than the property would have sold for.

Q. That is, the mortgage upon it to you?

A. The debt to me; the mortgage upon it. Mr. Marshall was just about to build, provided I would knock off from the indebtedness a certain amount; he and Mr. Barker would pay me up and he would build; that he was only able, I know, to build a small house. I know I complained a little afterwards that he had built a little better house than I expected, and, it seems to me, I knocked off from it somewhere in the neighborhood of $900, but that is mere memory. The reason I remember that is that I considered that I had paid Mr. Barker and Mr. Marshall somewhere from $900 to $1,200, which they were to pay me up in notary fees; they were never to charge me as long as they lived, and I never did
299 pay them anything after that. That is the reason it fixes it in my memory.

Q. Mayor Harrison, I noticed that the deed made by you to Mr. Barker appears upon this abstract to be dated December 1st, 1858, and to have been recorded November 17th, 1860. What do you say about its having been made at or about the time it appears to have been recorded?

A. I have an indistinct recollection that I sold it by contract first, but I am not certain. Of course, if I sold it by contract I would date my deed back to the date of the original contract, but to that I would not be willing to swear positively.

Q. I believe you said it was your impression the deed was made some time after you sold the land?

A. That is my recollection. My recollection is that I took the contract from Mr. Barker, but of that I am not certain.

Q. At the time that you received this payment and made this reduction, by whom was the money paid to you; who did it come from?

A. Mr. Marshall, part of it, and Mr. Barker part.

Q. Well, do you recollect what the proportions were?

A. I don't.

300 Q. Did you learn from Mr. Marshall at that time whether he was the owner of any portion of the property at that time?

A. I know he was the owner. I don't know that he individually was. I have an indistinct recollection that Mr. Marshall spoke of the property as being his wife's, but that is indistinct.

Q. The release of the mortgage appears to be dated the 13th of February, 1863. What did you say as to that having been at the time at which you received the money?

A. I could not state it, sir.

Q. Well, what would be your opinion about it; how near that time, I mean, at which the mortgage was paid off?

A. What date?

Q. The 13th of February, 1863.

A. I should judge I received the money prior to that.

Q. How much?

A. Well, whatever I accepted from them as full payment; the balance of the payment. How much before?

Q. Yes.

A. I could not tell you. I only know that the property commenced to go up very rapidly not a great while after I received the money, and that I only remember by the fact of telling Mr. Marshall and Mr. Barker that they had gotten this reduction at a good time;
301 that if I had known how it was going up I would not have made it, you know. The good times began to take effect thoroughly in 1863. That I remember distinctly, because I remember selling a great deal of property in that year.

Q. Do you say then it was in the year 1862?

A. I would not be able to fix the date at all. It might have been in the spring of 1863, because I didn't commence to sell very largely until August that year. I sold some property in August and got out of debt and commenced to make money very rapidly. It was not a great while before that; it might have been a year; it might have been though in February at the time that was dated.

Q. Mayor Harrison, let me call your attention to instrument No. 17, in this abstract, which appears to be a mortgage by James M. Marshall to you.

A. I had forgotten that Mr. Marshall made a mortgage to me.

Q. Do you remember about it now on looking at this?

A. I think Mr. Marshall did make me a mortgage for a certain portion of the Barker debt.

Q. Do you remember whether the mortgage was for the
302 proportion which the quantity of land which he had bought bore to the entire debt?

A. I could not tell precisely; that would only be a surmise. I have now a recollection that Mr. Marshall came to me and made a mortgage for a part of the purchase-money that Mr. Barker owed me and I credited on Mr. Barker's paper that much, provided it were paid—in other words, so as to hold Mr. Barker's original mortgage as well as this—but whenever that was paid I would release that much of it and hold Mr. Barker's mortgage over the whole.

Q. Now, Mayor Harrison, by No. 21 of this abstract the release of the mortgage made by James M. Marshall to you appears to have been dated January 13th, 1863, and to have been recorded April 11th, 1863. What do you say as to its having been made about those dates?

A. I suppose from those things that that would come nearer my recollection just now. It was during the year prior to the return of good times and that would bring it nearer than Mr. Barker's. Mr. Marshall paid me the money, his proportion, sooner than Mr. Barker did. Mr. Barker didn't pay until afterwards.

303 Q. But, as I understand you, you threw off about $900?
A. Well, I think I threw off about $900 to the two.

Q. The property not being considered worth the mortgage debt at the time?

A. The property was not worth the mortgage debt at the time we made these negotiations, but whether the negotiations *was* months prior to the making of the release or not I don't know. I might have made an agreement with them to take the money in 1862, early, and afterwards keep my promise with them. I have this recollection, that Mr. Marshall came to me and said that he had that property, and he wanted to build a house on it for his wife; that, it seems to me, that Mr. Larmon or some one was going to help him build a house; that they had not money enough to build much of a house, and I agreed with him, in consideration —. They made what you might call a poor mouth of it. It was hard times, and I agreed to knock off to what I considered really the property was worth. I did that a great deal about that time. If a person owed me a
304 thousand dollars on a lot and I thought the lot was not worth but $700, I would take the $700 and make a release deed. Now, that agreement might have been made any time in the year 1862 and still the release not have been made until 1863. It might have been a written agreement to do the thing. I could not positively state. I am pretty certain that the thing hung for some time, because very shortly after I made my release I recollect of Mr. Marshall building a much finer house than I thought he was able to build, and I rather reproached him for having been so poor, and he said something about Mr. Larmon helping, or something of the sort, that enabled him to do it.

Cross-examination by Mr. PADDOCK:

Q. Mayor Harrison, I call your attention to the fact that No. 11 of this abstract speaks of the record of the mortgage from Joseph N. Barker to yourself as having occurred on the 27th of November, 1858. In view of that fact, is it not now your better recollection that the title must have been made to Mr. Barker as early as that?

A. I will [not] say positively.

305 Q. Show that your hypothesis about a previous contract is, perhaps, erroneous?

A. I might, perhaps, have sold it to Mr. Barker a long time before the date. I don't know when I sold it to him; I may have sold it and made a contract, but I would not have thought of the contract if it had not been to account for the apparent discrepancy.

Q. If there was a contract it was prior to 1858?

A. Yes, sir; I would have put my mortgage immediately upon record. A deed is very frequently, where people have confidence, not put on record for a long time; a mortgage, however, is put on record at the time, because it is to secure the note. I expect you will find there that the mortgage is put on almost at the same time of the date of the papers. I have an indistinct recollection that I was going away and we made the papers in advance of when the deed was to commence to run.

Q. You had frequent conversations with James M. Marshall, I suppose, about the time of his becoming interested in this land?

A. Yes, sir.

306 Q. Well, is it not correct to say that it was your understanding that it was in some way without reference to details —that land had been placed for the benefit of Mrs. Marshall, Mrs. Susan C. Marshall here, or as a homestead for the Marshall family in some way?

Objected to.

A. My recollection is both Mr. Barker and Mr. Marshall spoke about their property being their home. I have a recollection that Mr. Barker's house was in Mrs. Barker's name on his original lot.

Q. Now, as to Mrs. Marshall?

A. And that Mr. Marshall was buying this property for his wife. There were conversations about the *property* of such things, and about the same time I placed the title of a home in my wife; we were discussing it, and I have the recollection that when Mr. Marshall got me to knock off the amount that I did that it was because of its being a home and not a speculation. I remember also his explaining to me the exact reason why he had built a better house that he had told me before he was able to build was that Mr. Larmon had helped him or built it for his daughter.

Q. Who was Mr. Larmon?

307 A. Mr. Larmon was Mrs. Marshall's father, Mr. Philip Larmon. He had told me that he could only build a small establishment, which was to act as an ell to the other house, but not long afterwards I went up there and saw what I considered a very fine house going up, and I felt rather aggrieved that he should have made me throw off so much when he was able to build so good a house, and blamed him for it; and he told me something about Mr. Larmon's doing it for Mrs. Marshall, but I will say here that this I would not have thought of but for my memory being refreshed; these things passed out of my mind years ago.

Q. Refreshed in what way?

A. By your questions; it makes me think of these conversations and the fact of my finding fault with him.

Q. Any by the exhibition of the abstract which Mr. Waterman has shown you?

A. Yes, sir.

By consent the signature of the witness to the above deposition is waived.

308 *Deposition of Joseph N. Barker.*

JOSEPH N. BARKER, a witness produced and sworn on behalf of the complainant, testified as follows:

Direct examination by Col. WATERMAN:

Q. What is your name, age, residence, and occupation?

A. Joseph N. Barker; lawful age; reside in Chicago; lawyer by profession.

Q. I call your attention to No. 13 of this abstract, 24222, made by Shortall & Hoard, Chase Bros. & Company, and Jones & Sellers, and ask you if you remember ever having owned the property described in that conveyance?

A. I did own the property.

Q. From whom did you purchase it?

A. I purchased it from Carter H. Harrison.

Q. Do you recollect making a conveyance of the same to James M. Marshall?

A. I do.

Q. From this abstract there appears to be a warranty deed from you to him dated November 1st, 1860, and recorded November 17th, 1860; state whether you remember having sold the property about that time.

A. I remember making the conveyance; yes, sir.

309 Q. Now there appears upon the abstract a conveyance from yourself and wife to Susan C. Marshall, dated the 14th of March, 1862, recorded July 14th, 1866; do you remember making that conveyance?

A. Yes, sir.

Q. What do you say as to whether it was about the time that it appears by that abstract to have been dated?

A. I should say, from my recollection, that it was about that time.

Q. Who requested you to make that conveyance?

A. Mr. James M. Marshall brought the second deed to me.

Q. And at his request you made it?

A. Yes, sir.

Q. And how was it as to the first one?

A. I sold the property to Mr. Marshall and made the deed to him at that time?

Q. And you conveyed it to Susan C. Marshall——

A. At Mr. Marshall's request.

Q. In 1862?

A. I could not fix the dates; it was after the second deed; that bears date March 14th, 1862, and was recorded July 14th, 1866.

Q. Do you remember when it was made?

A. I recollect there were two deeds made. I recollect making a deed, but I could not give you the dates. If I had not the deed before me I could not give you the dates.

310 Q. When would you say the second deed was made—after the time it bears date?

A. It was made while I lived on Indiana avenue. I lived there in 1863. I had sold to Mr. Marshall before; had made the second deed before I left. I lived the next door north. It was before I left there that I made this deed.

Q. Was it while he was living on the property?

A. Yes, sir.

Q. After he had been there?

A. Yes, sir.

Q. Do you mean after he had built the main house?

A. Yes, sir. They first built, if I recollect, a cottage, then an addi-

tion to it. I should say it was about the time of the building of the main house.

Q. That you made the second deed?

A. I should say so.

Cross-examination by Mr. PADDOCK:

Q. Mr. Barker, is it not your recollection that this deed which you have referred to, which is mentioned on this abstract as No. 14, was made for the purpose, and for the purpose only, of correcting an error in the acknowledgement of a former deed?

A. That is what the abstract shows.

Q. Is not that you recollection?

311 A. I recollect the fact that the deed was made to Mrs. Marshall at that time, but I think there was some defect in the acknowledgement and Mr. Marshall wanted [a] second deed, and he wanted that to his wife.

Q. A former deed to correct the acknowledgement of which this second deed was made; was a deed made by you to James M. Marshall, was it not?

A. Yes, sir.

Q. Just exactly as recited in this abstract?

A. Just as recited.

Q. And this deed of correction, No. 14, I understand you to say was made at the request of Mr. James M. Marshall?

A. Yes, sir.

Q. You handed it to him?

A. I did; that is my recollection.

Col. WATERMAN: At the time this second deed was made, you were living adjoining this property?

A. Yes, sir.

Q. Adjoining where Mr. Marshall lives—in the next house?

A. In the next house north, where Mr. Small lives now; I lived there until Oct. 6th, 1863.

Mr. PADDOCK: Do you remember any previous *colloquium* or interview between yourself and Mr. James M. Marshall, in connection*al* — deed?

312 A. No, sir; when he came to me and requested me to make the deed, I only remember that it was not made to himself, but made to his wife; I don't remember the conversation at that time.

Q. Do you remember where the business was transacted?

A. In my office; I think I executed it in my office and it was delivered there.

Q. Where was your office?

A. At the corner of Randolph and La Salle streets at that time.

Q. Who were present, if you recollect?

A. Oh, I can't remember.

Q. You don't recollect that Mrs. Susan C. Marshall was present, do you, Mr. Barker?

A. No, sir; I don't.

Q. I call your attention to the first deed testified to by yourself, Mr. Barker; I will ask you whether in the transaction of that purchase, which culminated in the deed, Mr. Marshall said anything of his intention to devote this land to the uses of a homestead for himself and family, and what did he say on that subject?

(Objected to.)

A. Yes; he spoke of purchasing this for a homestead that he was about building, and would soon build.

Q. What was the fact as to his having afterwards built on that land?

313 A. He did build very quickly afterwards, first a cottage and afterwards a front to the house.

Q. What was the fact as to the occupancy of the premises?

A. It has been occupied by the family from that time to the present time.

Signature waived by consent.

It is stipulated that the time for taking testimony is extended to February 1st, 1881.

314 *Deposition of Geo. L. Paddock, taken before Merritt H. Dement, a Notary Public in and for the County of Cook and State of Illinois, at Room* 21, 203 *Dearborn St., Chicago, March* 22, 1881.

Present: Paddock & Ide, solicitors for defendant, and A. N. Waterman, Esq., solicitor for complainant.

GEORGE L. PADDOCK, being duly sworn in said cause, testified as follows:

Shortly after the commencement of the forcible-detainer suit in the United States circuit court of James W. Paxton *vs.* James M. Marshall and others, which was begun *to* the May term, 1879, Mr. James M. Marshall called at my office and spoke to me about appearing for defendants in that case. Shortly after that he left with me a large package of documents, consisting of an abstract of title and a number of deeds and other papers. Among those papers were the deeds spoken of by the witness, Susan C. Marshall, a quit-claim deed from Thomas E. Marshall to Susan C. Marshall, a deed from Joseph N. Barker to Susan C. Marshall, and the other deeds which have been produced in evidence on behalf of the defendants in this case. That was the first knowledge I had ever had of these papers.

315 And the package has been in my custody and under my control ever since that time to the present. I know of no possession or custody of these papers exercised by Mrs. Marshall, except that I have, from time to time, made use of them in both the detainer suit and the present chancery proceedings as her counsel.

Cross-examination by Mr. WATERMAN:

Q. As I understand you, all of the deeds and papers which have been produced by Susan C. Marshall, or by you as her counsel, in

any of the litigations spoken of concerning these premises, were given to you by James M. Marshall?

A. Yes, sir; that is my recollection.

Q. Shortly after the commencement of the forcible-detainer suit?

A. Yes, sir; and I might add that they were given to me at this office, in this room, by Mr. Marshall, coming as I have described.

GEO. L. PADDOCK.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Merritt H. Dement, a notary public in and for said county and State, hereby certify that the foregoing is the deposition of George L. Paddock in said cause, taken by me at the time and place hereinbefore mentioned; that A. N. Waterman, Esq., solicitor for the complainant, was present; that the said deposition was re-
316 duced to writing by me and read over by the said witness and subscribed and sworn to by him in my presence.

In witness whereof I have hereto attached my notarial seal this 22nd day of March, A. D. 1881.

[NOTARIAL SEAL.] MERRITT H. DEMENT,
Notary Public.

317 *Deposition of Susan C. Marshall.*

MARCH 22, 1881.

SUSAN C. MARSHALL, being recalled on her own behalf, was examined by Mr. PADDOCK as follows:

Q. Mrs. Marshall, since your former examination a deed, purporting to be a deed from Joseph N. Barker and wife to Susan C. Marshall, has been referred to by witnesses for Mr. Paxton. I will now show you the deed to which I have referred, and which, as I understand, is the same one referred to by Mr. Barker in his testimony given in this case, and ask you whether or not the deed in question was ever delivered to you?

A. No, sir.

Q. When, prior to this suit, did you, for the first time, see or hear of such a deed?

A. Now.

Q. Did you ever authorize anybody to put it on record on your behalf?

A. No, sir.

Q. Mention has also been made of a release, purporting to run from Mr. Ives, mortgagee, to Susan C. Marshall, and another release, purporting to run from Lyman Baird to Susan C. Marshall, releasing a former deed of trust on the premises in controversy.
318 Did you ever see either of these releases prior to this suit?

A. No, sir.

Q. Was either of these releases ever delivered to you?

A. No, sir; I didn't know there was any.

Q. What authority, if any, did you ever give to any person to receive, on your behalf, these deeds that I have mentioned, or to record them?

A. Not any.

Cross-examination by Mr. WATERMAN:

Q. Mrs. Marshall, where are the deeds and releases that have been spoken of by Mr. Paddock in his examination of you now?

A. They are lying on the table.

Q. In the possession of your counsel?

A. In the possession of Mr. Paddock—yes, sir.

Q. Now, as I understand you, you have never kept or had in your custody or control, in any way, any of the deeds or papers relating to those premises?

A. No, sir; never did.

Q. Did you know where any of the deeds or papers relating to the premises were?

A. Did not.

Q. Had no charge or care over them in any way?

A. No, sir; never.

Q. And these deeds and papers which have been produced here by Mr. Paddock you never saw until after the commencement of this suit, I believe?

A. No, sir.

Q. Do you know where Mr. Paddock got them?

319 A. No, sir; I do not. I suppose at Mr. Marshall's office; I suppose he got them from the office, because that is where Mr. Marshall usually kept his papers—always kept them.

Q. Mr. Marshall's papers, after his death, were all at the office—in his safe, I suppose?

A. I never had any control of them or knew anything about them.

Q. Well, were the papers in his safe relating to these premises turned over to Mr. Paddock?

A. I could not tell you where Mr. Paddock got them, because I don't know; I suppose they were there.

Q. You suppose what?

A. I suppose that he has them all, so that is the only way I know.

Q. You suppose that the papers in Mr. Marshall's safe relating to these premises were turned over to Mr. Paddock?

A. Yes, sir; when the suit was commenced it would have been the most natural way for them to go.

320 *Deposition of Lyman Baird on the part of Complainant.*

Taken before Sidney P. Smith, notary public, at the office of Paddock & Ide; 41 Portland Bl'k, Chicago, Ills, on June 6th, 1881, as follows:

Boutell & Waterman, for compl't, and Paddock & Ide, for def't.

Q. 1. Are you familiar with the property in controversy in this suit?

A. Yes, sir.

Q. 2. Do you know its value?
A. I do approximately.
Q. 3. What is it worth?
A. 12 or 15 thousand dollars.
Q. 4. What is the land, independent of improvements, worth?
A. 7 or 8 thousand dollars.
Q. 5. Assuming that Mrs. Susan C. Marshall is 37 years of age, what would her life estate in the property, if unincumbered, be worth?
A. From 8 to 10 thousand dollars, I should think; not less than eight.

Cross-examination by counsel for defendant:

Q. 1. Upon what, Mr. Baird, do you base your estimate of the value of the life estate?
A. I base it upon her expectency of life and upon the net income that could probably be realized from the property.
Q. 2. At what do you state the expectancy and probable net income per year?
321 A. The expectancy about 30 years and the net income from six to seven hundred dollars per annum.
Q. 3. What has been the annual yearly tax and insurance in years past on that property?
A. I don't remember. The taxes last year were about 180 dollars.
Q. 4. What do you consider, at present rates, the fair monthly rent for the premises?
A. Am not sufficiently acquainted with the premises to give an accurate opinion about it; should think it might be from 75 to 80 dollars a month now.
Q. 5. When were you last in the house?
A. Never was in it.

LYMAN BAIRD.

Subscribed and sworn to before me.

SIDNEY P. SMITH,
Notary Public.

322 *Deposition of George L. Paddock, Taken before Henry W. Bishop, Master in Chancery of said Court, June 29th,* 1881.

Present: Mr. Paddock, for complainant, & Mr. Waterman, for def't.

Mr. Paddock, counsel for complainant in the cross-bill, offers complaint and summons in the forcible-detainer suit of James W. Paxton *vs.* Susan C. Marshall, James M. Marshall, and John B. Knight, dated on the 25th of April, 1879, issued from this court, mentioned in the pleadings herein; also the plea of not guilty filed in that case by Susan C. and James M. Marshall on the 5th day of May, 1879; also the verdict of the jury rendered in said case on the trial thereof by said jury before Judge Blodgett on the 18th of March, 1880, as

follows: "We, the jury, find the defendant not guilty." March 18, 1880. S. W. McMaster, foreman." That verdict was set aside by Judge Blodgett at the term at which it was rendered and a new trial granted in said cause, and the same is still pending in this court on the law side thereof.

323 GEORGE L. PADDOCK was recalled on behalf of the defendant and examined by Mr. WATERMAN and testified as follows:

Q. Mr. Paddock, when was this forcible-detainer case concerning which you have just put in some testimony tried?

A. I recollect that it was in March, 1880, and judging from the date of this verdict, which was filed on the 18th of March, 1880, after the trial, perhaps two days; I should say that was the date of the trial.

Q. Who acted as the attorney of Mr. and Mrs. Marshall in that case—in the trial of it?

A. I did.

Q. What witnesses were examined by you in that trial in behalf of Mr. and Mrs. Marshall?

A. James M. Marshall, Susan C. Marshall, Ophelia K. Noble and her husband, Dr. Noble, Arnes Boyer, and Dr. Reed, who has testified in this case; those are all [the] witnesses whose names are now remembered.

Q. Was Mrs. Marshall present in court during the entire trial of that case?

A. I couldn't say, Mr. Waterman; she was for nearly all the time, I should say—whether for quite all I couldn't say, for the
324 reason that I was sitting in front and she was sitting behind.

Q. Did you offer in the trial of that case any testimony that Mrs. Marshall had been taking morphine in the morning prior to the signing of the trust deed?

A. I don't remember asking any question expressly concerning the administration of morphine, but witnesses were examined with regard to Mrs. Marshall's sickness and about the fact of her being under medical treatment and taking remedies of some sort.

Q. Did you offer any evidence as to her being under the influence of opiates on the trial of that case?

A. I should say this that I do not remember asking any witness as to whether or not Mrs. Marshall was under the influence of opiates. Her physical condition at that time, her sickness, and the fact of her being under treatment *was* spoken of with more or less particularity by several of the witnesses in response to questions by me.

Q. Did you offer any evidence upon the trial of that case that Mrs. Marshall was out of her mind, insane, or crazy at the time of signing that trust deed?

A. My recollection is that I offered evidence tending to show that she was very sick and unable to attend to business; I do not
325 remember that any witness was asked whether she was insane at that time or out of her mind; I do not profess to be able to state on the spur of the moment and from mere recollection the

contents of all those witnesses' statements, because they were quite numerous and somewhat extensive; I do not recollect that I asked any witnesses whether Mrs. Marshall was insane or whether she was out of her mind.

Q. Did you offer any testimony that she was flighty or wild at the time of the signing of that deed?

A. I should say, as I have answered in regard to these other specific question, that I do not remember of asking any witness whether she was flighty or wild. I do remember that the general drift of the questions and answers tended to establish the fact that Mrs. Marshall was sick bodily and mentally and incapable of attending to her business affairs; was confined to her room and unable to leave her bed ever, &c. I do not remember of asking anybody whether she was flighty or whether she was out of her mind.

Q. When were you employed by the defendants in that case?

A. Well, I couldn't give you the exact date; it was some time after, as I recollect, the commencement of the detainer suit.

326 Q. Shortly after?

A. I think it was not many days after.

Q. Did any attorney other than yourself appear for the defendants in the trial of that case?

A. Well, I entered our appearance, I presume, in the name of our firm, Paddock & I.; my recollection is that I had pretty complete charge of the case. I do not remember that any other attorney appeared in the matter to take any active part in the defense.

327 *Deposition of Charles T. Brown, a Witness on Behalf of Defendant.*

Taken before Henry W. Bishop, Master in Chancery, November 1st, 1881.

Present: Mr. Waterman, for complainant, and Mr. Paddock, for defendant.

Int. 1. Please state your name and occupation.

A. Charles T. Brown; short-hand writer.

Q. Were you present at the detainer suit of Paxton *vs.* Marshall *et al.* in the United States circuit court for the northern district of Illinois some months ago?

A. I was present at a trial of those parties. I don't know the nature of the suit, and I can't say positively that I was present during the whole trial; I think I was during the whole trial.

Q. Do you remember the time of the trial?

A. I remember there was such a trial, and my impression is it was in the old Federal building, before we came over here.

Q. Was it about March, 1880?

A. I think it was in March.

Q. Did you take the testimony in short-hand of Mrs. James M. Marshall on that occasion?

A. I wouldn't be sure, without referring to my books, whether I took all of her testimony. I took some of her testimony; I think all.

Q. Have you your books with you—your notes?

328 A. I have my notes of the trial; I think all of them.

Q. Do you remember at whose instance you took this testimony?

A. I took them for S. W. Burnham, a short-hand writer; I think he took them for both sides, but I am not positive.

Q. Will you, Mr. Brown, please refer to your notes and state what Mrs. Marshall said concerning the circumstances under which she signed the deed mentioned in her testimony and her condition at the time?

Objected to as improper and immaterial.

Q. You may read as much as will give the connection of the matter.

A. Here is Mrs. J. M. Marshall, a witness——

Q. That is the witness. Did she testify in the case—Mrs. James M. Marshall?

A. Mrs. J. M. Marshall I have as a witness in the case.

Q. If she said anything on the subject of her condition, or the circumstances under which she signed the deed in controversy in that case, state what she said.

Objected to as immaterial and incompetent.

A. I have a question here:

"Q. I will ask you, Mrs. Marshall, if you remember signing a paper some time in February, 1872?

"A. I do.

"Q. I will ask you on what day you signed that paper?

329 "A. The 14th.

"Q. Of February?

"A. Yes, sir.

"Q. Now, I will ask you to state to the jury and the court the circumstances of the transaction—what occurred on that occasion?

"A. I was sick in bed at the time, I remember, this being the 14th, because it was valentine's day, and I had always been in the habit of directing valentines, and my children sent them, and that day I couldn't do it. I was very sick and suffering a great deal of pain, and Mr. Marshall came up from breakfast and told me he wanted me to sign a paper, and I said, 'Oh, pshaw, I don't want to sign.'

"Mr. Waterman: Wait; is that material?

"Mr. Paddock: I propose to connect it.

"The Court: I suppose she can give any circumstances that would tend to throw any light on the signing of the paper.

"The Witness: My sister was in the room, and he handed me the paper. I asked him what it was. He said he wanted to renew the mortgage, and I said, 'What mortgage?' and he said, 'On Prairie avenue.' I said I was so sick'——. I signed it, and I said I couldn't sign any papers, I was so sick—and under the influence of medicine.

330 "Q. What time of day was that?

"A. It was in the morning, I should judge, between nine and ten; no, it was half-past eight.

"Q. Was it before breakfast or after?
"A. After breakfast; after he came up from breakfast.
"Q. Look at this paper with your name upon it, and state whether that is your name upon it.
"A. Yes, sir; that is the one; that is my signature.
"Q. And that, you think, is the paper you speak of?
"A. Yes, sir; I should think it is. I know that it is my signature and I suppose that is the paper.
"Q. State to the jury how sick you were at that time.
"A. I was too sick to be up; I was in bed and was in bed over ten days afterwards.
"Q. Did you leave your room that day?
"A. No, sir; not for ten days or two weeks after that.
"Q. Did you leave your bed that day?
"A. No, sir; I did not. In fact I was so sick I didn't know hardly where I was.
"Q. Do you remember a professional visit by Dr. Reed in connection with that sickness?
"A. Yes, sir.
331 "Q. What day was that?
"A. That was the same morning, the 14th of February, and he lanced an ulcer. I remember that and how painful it was.
"Q. State, Mrs. Marshall, who were present at the time when you signed this paper.
"A. Mrs. Boyer, Dr. Noble, and Mrs. Noble.
"Q. Who is Mrs. Boyer?
"A. She is a person who had lived in my house for ten or fourteen years and she was with me.
"Q. Any relative of yours?
"A. Yes, sir; she is a cousin of mine, a distant relative, and she took charge of me when I was sick and nursed me.
"During this very sickness?
"A. Yes, sir.
"Q. Who was Mrs. Noble?
"A. She is a sister of mine who was living with me, and Dr. Noble — her husband. The reason they were all in there — I was in so much pain, and they were making po-ltices and doing all they could to relieve me.
"Q. I will ask whether there was any notary public there at that time?
"A. No, sir; there was not.
"Q. I will ask you whether John G. Shortall was there during that time?
332 "A. He was not.
"Q. I will ask you whether he came to your house during that day?
"A. No, sir; he did not.
"Q. Did he the next day?
"A. No, sir.
"Q. When, if ever, did he come to your house in connection with that deed?

"A. He didn't come at all.
"Q. Did you go down town?
"A. No, sir.
"Q. Did you go to his office?
"A. No, sir; I didn't know where his office was; that was after the fire; you know it was all destroyed.
"Q. Well, you didn't go, at any rate?
"A. No, sir."

Q. Have you stated now all you have in your notes as to her testimony concerning her condition of health at that time? If not, you can add anything else you see.

Objected to as incompetent.

A. That is all in the direct examination; I should have to read the cross-examination through as to that. In the cross-examination I find this:

"Q. Now, I understood you to say that Mr. Marshall, when he asked you to sign this deed, said he wanted to renew a mortgage on Prairie avenue?
333 "A. Yes, sir; I understood Mr. Marshall to say that. I was very sick at the time. I said: What is it I am signing? and he said: I want to renew a mortgage, and I understood him to say on Prairie avenue. Of course I didn't know there was any mortgage on the place we lived on or could be."

I find nothing further in relation to her condition at the time.

Q. Have you a memorandum of the title of this case, Mr. Brown, in your notes?
A. I have.
Q. Please read it.
A. March 16, 1880, before J. Blodgett and a jury. Paxton, L. Baird, trustee, *vs.* J. Marshall. Then opposite, Baird, Boutell, and Waterman; opposite, Marshall, Paddock & Ide. Forcible detainer.

Cross-examination by Mr. WATERMAN:

Q. Mr. Brown, do you remember what the testimony was that was given by Mrs. Marshall on that occasion?
A. I remember this independent of the books; I remember the question being asked her in regard to her sickness; I remember her confused manner and her dislike to state what was her trouble, and all she did state of the cause of the sickness was that it was
334 an ulcer, and that it was lanced.
Q. Do you remember anything else?
A. After having read my notes it is difficult to say what I remember, and what I get from my notes, which bring the whole thing up to me, so it would be utterly impossible for me to state what I remember and what is refreshed from reading the books.
Q. What is there, other than what you have just given, that she testified to that you can now state without reading your notes, that

you can now remember, as your recollection that she testified to on that occasion?

A. I remember that she stated that there were persons in the room at the time the paper was presented for her to sign; who those persons were I cannot remember; I remember of them.

Q. Anything else?

A. I remember that she said something about having signed other papers or deeds for her husband; that he was a real estate dealer, and, I think, she said that she had occasion to sign deeds on account of his being in that business; if she did state it, I remember it; if not, it is an impression.

Q. Anything else?

A. Nothing that I think of.

335 Q. The testimony you have given in your direct examination has been by you simply read from your notes?

A. Simply read from my notes; from where I commenced to read to where I ended I read all that was in my notes.

Q. You have not given all the testimony that you had in your notes that she gave on that occasion?

A. Oh, no.

Q. Neither all the direct nor all of the cross?

A. No, sir.

Col. WATERMAN: While objecting to the admissibility of any of this evidence, I insist that if any portion of the notes of Mr. Brown as to Mrs. Marshall's testimony are to be read and given in evidence that her entire testimony given on that occasion must be given, and I ask that the balance of her testimony, not already given, be given.

The WITNESS: I will do so.

336 *Deposition of Francis A. Bradley, taken before Henry W. Bishop, Master in Chancery of said Court, November 10th, 1881, at Chicago, Illinois.*

Present: Mr. Waterman, for complainant; Mr. Paddock, for defendant.

FRANCIS A. BRADLEY, a witness recalled on behalf of the complainant, was examined in chief by Mr. WATERMAN, and deposes and says as follows:

Q. Mr. Bradley, I call your attention to the fact that Mr. Marshall testifies that he received a letter from Baird & Bradley, under the date of March 27th, 1877, speaking of what Mr. Paxton had written, and that he then says that he replied to it. He wrote one letter, dated Chicago, April 7th, 1877, as follows:

"Messrs. Baird & Bradley, Loan Brokers,

"90 LA SALLE STREET, CHICAGO, ILLINOIS.

"James W. Paxton, Wheeling, West Virginia.

"DEAR SIR: Yours of March 31st is before me, calling my attention to my loan due February 13–14, 1877, for the sum of $10,000.

I will accept your offer of extension, as proposed by one J. W. Paxton, who now claims to be the owner of said loan of $10,000,
337 but will have to have, say, six months' time to pay old and new interest, taxes, and insurance. I am so pressed and tied up at present that I cannot say clearly wherein I can do better at present.

" Yours truly, J. M. MARSHALL."

And that he says he wrote and sent a letter to Baird & Bradley—a letter dated Chicago, April 17, 1877, as follows:

" CHICAGO, *April* 17, 1877.

" To Messrs. Baird & Bradley, loan brokers, 90 La Salle street, Chicago:

" Yours of April 13th, 1877, is before me, saying that one J. W. Paxton, who holds my papers for said loan of $10,000, due February 13, 1877, will accept my terms made by you in my letter of April 7th, 1877. Those terms satisfy my present standing point. I hope in future that we will make it more pleasant for both of us, as we have been dealing a long time, and this is the first quarrel we have had in business.

" Yours truly, JAMES M. MARSHALL."

Q. Mr. Bradley, has your attention been called to Mr. Marshall's testimony in that respect before?

A. I don't remember that it has.

Q. Did Baird & Bradley ever receive any such letters as that?

338 A. Not to my knowledge.

Q. If any such letters had been received by Baird & Bradley at the office of Baird & Bradley would you have known of it?

A. Undoubtedly I should.

Q. In what way, if at all, were the letters received from Mr. Marshall or any letters in regard to this matter preserved?

A. We have a letter-file where we file letters that we receive.

Q. State whether or not the letters in regard to this matter received from Mr. Marshall were preserved.

A. No, sir; we have no evidence that they received any such letters.

Q. I am not speaking of these letters, but whether the letters you did receive were preserved.

A. Yes, sir.

Q. Did Mr. Marshall ever, in any conversation which he had with you subsequent to the date of these letters, make any reference to his sending any such letters?

A. No, sir.

Q. When did you first hear that it was claimed that any such letters had ever been sent to Baird & Bradley?

A. After the announcement of this trouble.

Q. You mean after the announcement of this suit?

A. This suit; yes.

Cross-examination by Mr. PADDOCK:

339 Q. You knew, Mr. Bradley, did you not, that immediately after the maturity of this loan of $10,000 Mr. Marshall began some pretty active efforts to obtain a new loan with which to pay it off?

A. Well, I don't know personally what he did, but I infer that he had made some efforts.

Q. Did he not call the matter to the attention of your firm and state that he was making efforts to get another loan?

A. Yes; he did.

Q. Do you remember taking any part with Mr. Marshall in these conversations about his efforts to arrange or obtain a new loan at this time, Mr. Bradley?

A. No, sir; I don't remember anything special, anything in particular, in regard to his efforts to make a loan.

Redirect examination by Col. WATERMAN:

Q. Mr. Bradley, do you remember, *any* connection with his efforts to make a loan, anything about his coming in and speaking or giving a reason why he could not get a loan?

340 A. I remember he came in with his abstract and handed it to Mr. Baird and said—I was sitting at my desk; he said that he could not make his loan, on account of some trouble in the abstract. That is all I remember on that occasion, and he left it and went out.

Q. Do you remember what he said was the trouble?

A. I don't think he stated at that time, because I didn't know what it was until afterwards.

Q. Didn't know until afterwards?

A. No, sir.

Q. How frequently along that spring or winter after this mortgage matured was Mr. Marshall conversing with you on this matter?

A. Well, I don't think he was conversing with me immediately after its maturity, but abstract was left by him, as I stated. He came in several times; I saw him. I should think I met him within two or three or four weeks.

Q. And talked about this matter?

A. Talked about the matter.

Q. How late was that?

A. Well, I should think it ran through a month, perhaps, altogether, after he left the abstract with us—after he returned it to us.

341 Q. Did you see one letter from him to you on this subject, dated in June; did these conversations run as late as that?

A. I can't remember now the dates; it might have run longer. I am totally ignorant of the dates he came, but the fact that he came in after that several times there is no question about.

342 *Deposition of Francis Bradley, taken before John Ritchie, a Notary Public, on the 6th & 21st days of December, 1880, at the Office of Boutell & Waterman, at Room 19, No. 88 La Salle Street, Chicago, Illinois.*

Direct examination by Mr. WATERMAN:

Q. What is your name, age, residence, and occupation?

A. My name is Francis Bradley; I am 65 years of age, and I am a loan agent.

Q. Are you of the firm of Baird & Bradley, of this city?

A. Yes, sir.

Q. How long have you been a member of the firm of Baird & Bradley, loan agents, in this city?

A. Eighteen or nineteen years; eighteen.

Q. Did you know James M. Marshall in his lifetime?

A. Yes, sir.

Q. Do you know Susan C. Marshall?

A. Yes, sir.

Q. When did you first make her acquaintance?

A. I couldn't say when.

Q. Can you tell about?

A. I have no distinct recollection when I first met Mrs. Marshall; it is impossible for me to say.

343 Q. Have you any recollection of ever having met her prior to the trial of the forcible-detainer suit concerning the property involved in this case?

A. I have no distinct recollection of ever having met her.

Solicitor for complainant offers in evidence a deed of trust made by Susan C. Marshall and James M. Marshall, dated February 13th, 1872, and recorded February 14th, 1872, in book 56 of records, page 48.

Also a certificate of acknowledgement thereof.

Also a certificate of recording, and the same are marked "Exhibit A to Deposition of Francis Bradley."

Also a bond made by James M. Marshall, dated February 13th, 1872.

Also a coupon interest note, made by James M. Marshall, of the same date, maturing February 13th, 1877, and the same are marked Exhibit B.

Q. (Handing witness above-mentioned papers.) Look at these, and state whether those papers were prepared in the office of Baird & Bradley.

A. They were, sir.

344 Q. Do you remember for what that trust deed was given?

A. It was given for a loan of $10,000.

Q. Made when?

A. The loan was made in February, 1872.

Q. By whom?

A. By James M. Marshall.

Q. A loan made by whom and to whom?

A. I don't understand you.

Q. I want to know who the loan was made by and to.

A. The loan was made by James W. Paxton to Susan C. and James M. Marshall.

Q. Who acted as the agents of Mr. Paxton in the making of this loan?

A. Baird & Bradley.

Q. When did you first hear or have notice in any way that Mrs. Marshall claimed that she had not acknowledged that trust deed, or that anybody so claimed?

A. I can't recollect the date, but it was at the time—just before the suit for forcible detainer came on.

Q. A few days before the trial of the forcible-detainer case?

A. Yes, sir.

Q. Had you remained the agents of Mr. Paxton in this city up to that time?

A. Yes, sir.

Q. Where does Mr. Paxton reside?

A. At Wheeling, West Virginia.

345 Q. Where did he reside at the time this loan was made?

A. At the same place.

Q. And has ever since?

A. Yes, sir.

Cross-examination by Mr. PADDOCK:

Q. You have stated that this transaction of the 13th of February, 1872, to which you have referred, was a loan by James W. Paxton to Susan C. and James M. Marshall. Do you mean by that anything more than that it was a loan upon security of a deed of trust to be given to Mr. Paxton by Mr. Marshall and his wife?

A. I mean that.

Q. I presume you have no recollection of having seen Mrs. Marshall present in your office when this transaction occurred, have you?

A. I have no recollection; I can't recall seeing her.

Q. I presume you did not wish to be understood as saying that Mrs. Marshall received any part of this loan, so far as you know?

A. I couldn't say.

Q. Wouldn't it be entirely correct to say that, so far as your firm of Baird & Bradley was concerned, the negotiating party was Mr. James M. Marshall himself, you representing Mr. Paxton

346 and Mr. Marshall coming to the office and obtaining the loan?

A. I have no reason to doubt that the negotiation was with Mr. Marshall, yet I have no recollection distinctly about any part of that transaction.

Q. At any rate I do not understand you to state that Mrs. Susan C. Marshall appeared at your office and took any part in the negotiation.

A. No, sir; I couldn't state that she was there.

Q. Had you had other transactions with Mr. James M. Marshall before this?

A. Yes, sir.

Q. He was a person with whom you were acquainted, I suppose, at that time.

A. Oh, I knew him very well.

Q. What were your relations towards Mr. Paxton at that time—that is, in February, 1882. You speak of having been his agent. Will you be kind enough to explain that more detailed than you have? Give the nature of your agency for him at that time.

A. The nature of our agency for him was in loaning money, which he furnished us for him, on real estate security here, and in looking after the loan after it was made.

Q. Can you give us an idea of the extent of those loans prior to this time?

347 A. That were made for Mr. Paxton?

Q. Yes.

A. I could tell, but I couldn't guess very near perhaps; we made a good many loans for him.

Q. Prior to the 13th day of February, 1872?

A. I think we did, but I could not say exactly what.

Q. What was the fact as to your discretion in regard to investing his moneys; had you a general authority over his funds or how was that?

A. No, sir.

Q. Each case was reported to him?

A. Each case was reported to him, as is our custom.

Q. I understand you to say that you did not learn until about the time of the trial of the forcible-detainer suit that Mrs. Marshall claimed that she had not acknowledged the deed of trust in controversy?

A. I didn't know it until then.

Q. Did you ever inquire of her on that point?

A. No, sir.

Q. Did your firm, so far as you know, ever make any inquiries of Mrs. Marshall as to whether she had or had not acknowledged that deed?

A. They did not so far as I know.

Q. Is it not true that so far as you know the firm of Baird

348 & Bradley upon that question relied upon the certificate of acknowledgement which Mr. Waterman has exhibited here?

A. Yes, sir.

Q. Do you remember anything about Mr. Marshall having received this paper in an unsigned form, and taken it from your office about the 13th of February, 1872?

A. I can't recall any such occurrence.

Q. Where were you on the 13th of February, 1872?

A. I don't know, sir; I might recall that answer, because it occurs to me; if you want to know where our office was, it was on Wabash avenue.

Q. I was only asking that question with a view of perhaps aiding

your recollection, and thereby assisting you to remember whether or not you were present in your office on the 13th of February, 1872?

A. I could tell, but I do not recall now.

Q. Do you remember being personally present during any part of the negotiations between Mr. Marshall and Baird and Bradley which led to this loan?

A. I have only a general recollection about that, and I
349 could not state particulars in regard to this transaction, except in connection with Mr. Marshall doing business with us; we saw him frequently—that is, not unfrequently.

Q. What is your general recollection as to whether Mr. Marshall was handed this mortgage by some person in your office, on or about the 13th of Feb., for the purpose of having it signed?

A. I could not state. Our usual custom is to hand it to a notary and have it acknowledged; that is all that happened usually, but couldn't say whether it was that way in this case.

Q. What gentlemen composed the working force of Baird & Bradley at this time beside yourself and Mr. Bradley?

A. Charles F. Marsh, Heman Allen, who drew these papers, and Charles A. Schmidt.

Q. Where is Mr. Heman Allen?

A. He is dead.

Q. Are Mr. Marsh and Mr. Schmidt both in town?

A. They are in our office now.

Q. Do you recognize the handwriting of Mr. Allen in this deed of trust?

A. Yes, sir.

Q. Do you remember whether or not the title to this property was examined as a preliminary to the making of this loan?

350 A. There was an examination.

Q. By counsel—I do not ask the name of counsel?

A. I think not, sir. I have no recollection that it was; it had been examined before in the making of prior loans.

Q. Can you, without mentioning the name of counsel, give me the date of that prior examination, or about the date?

A. I don't recollect, sir, but I could tell about the time by our book, where we have an entry of it and the date.

Q. Could you fix it now, without reference to your book, by reference to the prior loan you have alluded to?

A. I think it was the first loan when the examination was made, which was a $1,300 loan; it was examined about April 1, 1863.

Q. At whose instance was this examination made in 1863—made by counsel representing your firm?

A. Yes, sir; representing our firm. Judge Skinner examined our abstracts at that time for us.

Q. Then, as to the subsequent transactions, do I understand you to state that no examination was made of the records of title
351 in Cook county, or that your firm made an examination without the aid of counsel?

A. We examined afterward, so far as I recollect. I have no recollection of any other examinations.

Q. In the course of those examinations didn't you become aware that this property was property which had been set apart by deed to a trustee for the benefit of Mrs. Marshall as her homestead and that of her children?

A. No, sir; I should say not.

Q. Have you any recollection of the claim of title involved in this deed of trust—any present recollection of the nature of the conveyances?

A. The abstract examined by Judge Skinner for us was burned up. Mr. Marshall brought in a new abstract made after the fire, and we didn't think it necessary to go back of the loan we made at that time, and did not, so far as I know, in the examination.

Mr. WATERMAN:

Q. You mean by "that time" the loan made in 1863?

A. That is my recollection, my recollection is indistinct as to—I can't recall exactly what was done.

Mr. PADDOCK:

352 Q. The drift of my question was to inquire whether you had any information concerning the fact that this property had been set apart for Mrs. Marshall as a homestead by a deed to a trustee. Do you recollect any information of that nature?

A. No, sir,

Q. Were you not, at the time of this loan of Feb. 13, 1872, aware of the fact that Mrs. Marshall and her family were living on the premises as a homestead?

A. I should say yes.

Q. How long had she been so residing, so far as you know?

A. Well, that I couldn't tell.

Q. Some years prior to that?

A. I think she had; that is my general recollection about it.

Q. In the division of the duties between yourself and partner, if there was any division, what was your particular department about this time—February, 1872, and what was his?

A. There was no special division at that time, I believe.

Q. There was no apportionment of the work into departments?

A. No, sir; we both did what came up as it came up.

Q. What were Mr. Marsh's duties as your assistant at that time?

353 A. Mr. Marsh, I think, used to look over papers sometimes. He was something of a lawyer himself. He did general work about the office.

Q. Mr. Marsh was a member of the bar, was he not?

A. No, sir; he studied law in New York, I think.

Q. He was not a member of the bar of this State?

A. No, sir; I think not.

Q. What was Mr. Schmidt's part of the duties in the office?

A. He was our book-keeper and cashier.

354 *Deposition of Lyman Baird,*

A witness on behalf of complainant, taken before James Hewitt, a notary public, on the 7th, 8th, and 20th days of December, 1880, at the office of Boutill and Waterman, room 19, No. 88 La Salle St., Chicago, Illinois.

DEC. 7TH, 1880—2 p. m.

Direct examination by Mr. PADDOCK:

Q. What is your age, name, residence, and occupation?

A. Lyman Baird; lawful age; loan agent; Chicago.

Q. What was your relation to Mr. James W. Paxton, the complainant, in the month of February, 1872, the date of the deed of trust in controversy?

A. No relation with him, except we acted as his brokers at that time, making loans.

Q. Had you some correspondence with him at that time?

A. At what what time was that?

Q. February, 1872.

A. I presume so. I don't remember.

Q. Did you, on or about the 13th February, 1872, have a transaction with James M. Marshall in relation to Mr. Paxton?

A. I don't know. I cannot remember these dates and things. I don't know whether I did or not. I presume so.

Q. Have you seen the deed of trust in controversy in this case?

355 A. I have.

Q. Do you remember its date?

A. No, sir.

Q. Do you remember the fact of its having been made?

A. Yes, sir.

Q. Do you remember the fact of a loan having been made at about the date of that deed?

A. Yes, sir.

Q. Do I understand you to say that you had no correspondence with Mr. Paxton during the year 1872?

A. No, sir. I don't remember whether I did or not. I think it likely I did.

Q. What is the fact about your having had correspondence with Mr. Paxton during the year- 1876 and 1877; did you have such correspondence?

A. Yes, sir; we did.

Q. That is to say, the firm of Baird & Bradley, of which you are a partner, had correspondence during the years 1876 and 1877 with the complainant, Mr. Paxton?

A. Yes, sir.

Q. In the course of that correspondence, did you receive letters from Mr. Paxton and write him answers to those letters?

A. Yes, sir.

Q. Have you letter-press copies of the answers written by you to Mr. Paxton?

356 A. Yes, sir.

Q. Have you the originals from Paxton to your firm?

A. I think I have.

Q. During those years did the firm of Baird & Bradley have any written correspondence with Mr. James M. Marshall?

A. I think we had some correspondence with Mr. Marshall; that is to say, we had some correspondence with him asking him to pay certain interest that was due.

Q. I haven't got so far yet as to ask you the contents of any of these letters to Mr. Marshall. I understand you to state that you did have some correspondence with Mr. Marshall during those years. Is that correct?

A. I am not certain, sir; I may have had.

Q. Will you oblige me by looking at your letter-books and answer the question, after having examined them, as to whether during the years 1876 and 1877 the firm of Baird & Bradley had any written correspondence with Mr. James M Marshall?

A. I don't find any copies of my letters to Mr. James M. Marshall in those years.

357 Q. I see some books at your side upon the chair, apparently letter-press copy-books, and I will ask you to state what they are and what period do they cover?

A. They are letter-press copies of the correspondence of Baird & Bradley from November 13th, 1875, to August, 1877.

Q. Please give the number of these volumes, and if they have any serial numbers upon them please state these serial numbers.

A. Number 63 to 69, inclusive.

Q. Is this series complete between those dates so that it covers all the letter-press copies of which you have any knowledge?

A. Yes, sir.

Q. Is it indexed; and, if so, in what manner?

A. Indexed in the usual way.

Q. Alphabetically?

A. Alphabetically.

Q. Each volume?

A. Yes, sir.

Q. Have you, Mr. Baird, a letter from Mr. Paxton to Baird & Bradley in which occurs this expression: "It is useless for him to talk of renewing at a less rate of interest till he pays that now due."

A. What is the date of the letter?

358 Q. I cannot give you the date; it is referred to in this letter of March 31st, so that I infer it refers to a letter of his previous to that; the letter for which I am inquiring is, I infer, a few days prior to March 31st, 1877.

A. Prior to which date?

Q. March 31st, 1877.

A. Yes, sir.

Q. To avoid the necessity of asking for the detaching of that letter, will you please read it in full, from beginning to end, if you know it to be in Mr. Paxton's handwriting? There is no objection to that, is there?

Mr. WATERMAN:

A. No, sir.

"WHEELING, *March 28th*, 1877.

"Yours of 24th inst., with Marshall's letter, received. It is useless for him to talk of renewing at a less rate of interest till he pays that now due. If he will do that and pay six months' interest in advance, at 8 per cent., I will permit the loan to run at that rate of interest, providing taxes and insurance are kept up; otherwise, I must proceed to foreclose. I could scarcely be expected to allow the debt to accumulate. You may communicate this to Mr. Marshall as my ultimatum, requiring prompt action on his part.

"Yours truly, J. W. PAXTON."

359 Then a postscript. Well, that relates to another matter. Do you want that?

Q. I do not want it, unless you wish it. I see no reason why it should be mentioned.

A. Well, this is another matter entirely.

Q. Will you please state when you received that letter from Mr. Paxton?

A. I can't state that. I see it was acknowledged by my memorandum on the 31st of March; so we must have received it about that date.

Q. I will show you a letter written upon the letter-head of Baird & Bradley and bearing date Chicago, March 31st, 1877, signed Baird & Bradley, and I will then ask you if you identify the letter and the handwriting and remember anything in connection with the sending of the letter.

A. Yes; that is from our firm; that was written in answer or in consequence of this letter from Mr. Paxton.

Q. In whose handwriting do you find this letter from Baird & Bradley?

A. That is Luther D. Bradley's handwriting, signed by Mr. Bradley personally.

Q. Where is Mr. Luther D. Bradley now?

A. He is in our office.

360 Q. I will ask you, Mr. Baird, if you have a letter, bearing date April 7th, 1877, from James M. Marshall, upon the subject of this loan affair?

A. No, sir; I have not.

Q. I will ask you if you have any letters now in your hands from Mr. Marshall dated in 1877?

A. Yes, sir.

Q. Will you be kind enough to give the dates?

A. January 13th, 1877; one without date, but from the time it was filed it probably was in May, 1877.

Q. Has it a file mark?

A. No, sir; it was on the letter file in that month, as if it had been filed.

Q. But you see no file mark upon it?

A. There is no file mark upon it.
Q. Well, that is two letters; what other letters have you?
A. Well, I think this is June 15th, 1877.
Q. What others?
A. That is all.
Q. I will ask you if your firm have in their possession or control or if they have any knowledge of the present or past whereabouts of a letter sent to them from James M. Marshall bearing date April 7th, 1877, having reference to the making of the loan in controversy in this case, or the extension of such loan?
361 A. What is the date?
Q. April 7th, 1877.
A. I have no knowledge of any such letter at all.
Q. What information have you of any such letter?
A. No information of any kind.
Q. What knowledge or information have you of any letters from Mr. Marshall to Baird & Bradley having been transmitted or turned over to any other party at any time?
A. By us?
Q. By yourself or anybody else.
A. I have no knowledge of any such at all.
Q. What information have you on that point at all, if any?
A. What do you mean by information? I have no knowledge.
Q. I wish you to state, as to that, what information have you with regard to any letters addressed by James M. Marshall to Baird & Bradley having been transmitted or turned over by the firm of Baird & Bradley to any other person at any time.
A. No information at all of any such letters.
Q. Have you a letter addressed by James M. Marshall to Baird & Bradley dated Chicago, April 17th, 1877?
A. No, sir.
362 Q. Did the firm of Baird & Bradley ever have such a letter?
A. No, sir.
Q. Do you mean by that that neither of the members of that firm did receive such a letter, so far as you know?
A. I never heard of any letter of that kind in the office of the firm.
Q. Will you be kind enough to read the letters which you say you did receive—one dated January 13th, 1877, and the other two—distinguishing them by their dates?

"CHICAGO, *January 13th*, 1877.

"To cashier of B. & B.:
"Your check will be renewed—I think it is—and paid by Monday.
"Yours, JAMES M. MARSHALL."

Q. By Monday?
A. By Monday.
Q. That is a pencil note, it appears?
A. Yes.
Q. Will you please read the next communication?
A. The next communication is without date, but I suppose it was

received in the month of May, from the time it was filed; it is pretty hard to read. What is that?

Q. Moore.

A. It looks like "Moore."

363 Q. Was there anybody of the name of More?

A. No.

Q. The next is Dr. Boone, isn't it?

A. Yes, sir.

Q. Was there anybody by the name of Morse?

A. No, sir.

Q. Does this bear on this subject?

A. Well, I don't know; I have not looked it through.

Mr. WATERMAN: Well, read it.

A. I think it is—"Messrs ——: Dr. Boone took the papers; he wanted to see some parts; will you give them to me to-night? Don't you send for them. I want him to examine them, so he will be satisfied. Tell Bradley he can have them sure to-morrow. J. M."

Q. That is another pencil note, is it not?

A. A pencil note.

Q. In Mr. James M. Marshall's handwriting?

A. To my best knowledge and belief it is, sir.

Q. Did you read the signature to it there?

A. Well, J. M. M.; but I see that somebody has put underneath it "J. M. Marshall;" that was written at the time it was received, which was done naturally, knowing it was from him.

Q. There is no doubt in your mind that that was a com-

364 munication to your firm from James M. Marshall?

A. No, sir.

Q. What other papers did Mr. Marshall have at that time? He mentions papers there, you see.

A. My impression is it was an abstract.

Q. What abstract?

A. The abstract of the title to this property.

Q. From whom did he obtain them?

A. From us.

Q. Was it a complete abstract of the title?

A. I don't remember.

Q. Was it the abstract upon which you had acted in making the first loan in 1863?

A. No, sir; it was an abstract made since the fire.

Q. What was the occasion of Mr. Marshall having the abstract of this property, as mentioned in his letter?

A. My impression is he was trying to get a loan to pay off this loan.

Q. Had Dr. Boone something to do with the matter, as you understand it?

A. Not to my knowledge. I don't know what he had to do with Dr. Boone about it.

Q. You have no other information other than the letter itself about that?

A. No, sir.

365 Q. He did, however, obtain from you the abstract for the purpose of making a new loan?

A. I think he did.

Q. And had it at the date of that memorandum—May, 1877?

A. I think that was the paper he refers to, to the best of my knowledge and belief.

Q. Now proceed and read the paper of June 15th, 1877.

Messrs. B. & Bradley, Chicago:

DEAR SIRS: I have to-day called upon Mr. Warfield, the present agent in a financial way of the Dr. Boone Company, of Boston, and he will to-morrow, or Monday, or as early in the week—there is something I cannot make out.

Q. "Next?"

A. Perhaps that is what he means—"or early in the week next, report to me what is due from me, and what he will take for the lien on my Prairie-avenue security. Now, just as soon as I can do anything by paying money or exchange, or any other way"—there's a word I cannot make out.

Q. "That will," isn't it?

A. "Or any other way that will close our deal in a square
366 way, I want to do whatever I can.

"Yours truly, J. M. MARSHALL."

Q. Please refer to your letter-press books and give the dates of any letters written by yourself to Mr. James M. Marshall subsequent to the letter of March 31st, 1877, which I have shown you.

A. I don't find any letter-press copies of any letters to Mr. Marshall subsequent to that date.

Q. What letters do you find prior to that date?

A. I don't know that I have got any prior. I haven't any noted here. Did your request cover that? I looked for whatever that request called for, but I found no copies of any letters to Mr. Marshall.

Q. I understand you to say you looked for what that notice called for?

A. Yes, sir.

Q. Well, suppose you begin now and refer to your book, and refer to March 31st, 1877, and see what, if any, letters you find to Mr. Marshall.

A. March 31st, 1877?

Q. Yes.

A. I have none up to August, 1877.

Q. Well, go on.

367 A. *That is* all the books I have here, sir. I looked at that before and I will say we have none. That is my answer to that.

Q. You mean you have no letter-press copies in the letter-press copy-books before you of such letters?

A. Yes, sir; that letter was not copied you have in your hand.

Q. The letter of March 31st, 1877, was not copied?

A. No, sir.

Q. To what extent were you in the habit of writing letters without copying them?

A. None, except dunning letters as a rule, and those we didn't generally keep; they were too common.

Mr. WATERMAN: But copied everything else?

A. Yes, sir. We never copied those kind of letters.

Mr. PADDOCK:

Q. This letter of March 31st, 1877, you call a dunning letter?

A. Well, all letters of——

Q. Letters of that kind?

A. Yes, letters of that character. Yes, I should call that a pretty strong dunning letter.

Q. Letters, then, of the general character of your letter of March 31st, 1877, you don't expect to find a copy of in your letter-
368 press books, as I understand you?

A. No, sir; not as a rule, unless there is some special reason for it.

Q. Mr. Baird, will you search your letter-press copy-books and give me the date of such letters from Baird & Bradley to the complainant Paxton as you may find copied in your books between the 31st of March, 1877, to the end of that year?

A. Including the 31st of March?

Q. Yes.

A. There is one the 31st of March.

Q. 1877?

A. 1877.

Q. What is the next one you find?

A. The next is April 2d, 1877.

Q. The next?

A. May 2d, 1877; May 15th, 1877; June 8th, 1877; that is as far as these books go; that is all we have.

Q. Then, as I understand, you have given all the letter-press copies which during the year 1877, subsequent to the 31st of March, appear on your copy-books?

A. Yes, sir.

Q. All letters to Mr. Paxton?

A. Yes, sir; on all sorts of business or relating to this business.

Q. Well, you had better qualify it so that your meaning will appear.

369 A. Relating to the——

Q. To the Marshall loan; is that the idea?

A. Yes, sir.

Q. Can you give us any idea of the number and dates of letters to Mr. Paxton from your firm, shown on your copy-books on other subjects, Mr. Baird, during that time—some general idea of the number of times you wrote him?

A. Well, in these two books there are about two dozen letters to Mr. Paxton; that reaches from February 8th to August, 1877.

Q. Are you pretty certain that the five letters you have distin-

guished cover all the letters shown on your letter copy-book relative to this Marshall loan?

A. Yes, sir; I am sure they do.

Q. Will you show me, if you please, the letter of the 31st of March, 1877.

(Witness hands book to counsel.)

Q. Will you be kind enough to read that letter.

"31st MARCH, 1877.

"J. W. Paxton, Wheeling, West Virginia.

"DEAR SIR:"——

I will say this is copied from a form, shall I supply that form?

Q. You may explain if you like that it was copied from a
370 printed form, and then read what appears in manuscript there.

A. This letter was written on a form we have for acknowledging letters—"28," that relates to the date of the letter acknowledged—"we will communicate with the parties at once your *ultimatum*.

"Yours respectfully, BAIRD & BRADLEY."

Q. Was the original of that letter sent to Mr. Paxton?

A. Yes, sir.

Q. You have given its date, I believe, the 31st March, 1877?

A. Yes, sir; the 31st of March, 1877.

Q. Will you please show me the next letter of April 2d, 1877?

(Witness hands the letter-book to counsel.)

Q. Be kind enough to read that letter, Mr. Baird; give its date and signature.

A. Shall I read the part that refers to something else?

Q. You may explain that any way so it will be intelligible.

A. It is dated "April 2d, 1877. James W. Paxton, Wheeling, West Virginia. After allouding to another subject it says: "Mr. Marshall is trying to get a loan at 7 per cent. and pay up. We shall
be surprised if he can do so, but he thinks he can." The sig-
371 nature is written on a form also; the signature is printed.

Q. Was that letter sent to Mr. Paxton?

A. It was.

Q. At about its date?

A. At its date; yes, sir.

Q. Will you show me, please, the letter of May 2d?

(Witness hands letter-book to counsel.)

Q. That appears to relate to the same subject; please read that, Mr. Baird.

A. Referring to a letter from Mr. Paxton of 28 ult.—that is, of April. Bond and trust deed of James M. Marshall, $10,000, due February 13, 1877. We note your instructions and will inform Mr. Marshall of the same.

Yours truly, BAIRD & BRADLEY.

A. No, sir.

Q. To what extent were you in the habit of writing letters without copying them?

A. None, except dunning letters as a rule, and those we didn't generally keep; they were too common.

Mr. WATERMAN: But copied everything else?

A. Yes, sir. We never copied those kind of letters.

Mr. PADDOCK:

Q. This letter of March 31st, 1877, you call a dunning letter?

A. Well, all letters of——

Q. Letters of that kind?

A. Yes, letters of that character. Yes, I should call that a pretty strong dunning letter.

Q. Letters, then, of the general character of your letter of March 31st, 1877, you don't expect to find a copy of in your letter-
368 press books, as I understand you?

A. No, sir; not as a rule, unless there is some special reason for it.

Q. Mr. Baird, will you search your letter-press copy-books and give me the date of such letters from Baird & Bradley to the complainant Paxton as you may find copied in your books between the 31st of March, 1877, to the end of that year?

A. Including the 31st of March?

Q. Yes.

A. There is one the 31st of March.

Q. 1877?

A. 1877.

Q. What is the next one you find?

A. The next is April 2d, 1877.

Q. The next?

A. May 2d, 1877; May 15th, 1877; June 8th, 1877; that is as far as these books go; that is all we have.

Q. Then, as I understand, you have given all the letter-press copies which during the year 1877, subsequent to the 31st of March, appear on your copy-books?

A. Yes, sir.

Q. All letters to Mr. Paxton?

A. Yes, sir; on all sorts of business or relating to this business.

Q. Well, you had better qualify it so that your meaning will appear.

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Q. To the Marshall loan; is that the idea?

A. Yes, sir.

Q. Can you give us any idea of the number and dates of letters to Mr. Paxton from your firm, shown on your copy-books on other subjects, Mr. Baird, during that time—some general idea of the number of times you wrote him?

A. Well, in these two books there are about two dozen letters to Mr. Paxton; that reaches from February 8th to August, 1877.

Q. Are you pretty certain that the five letters you have distin-

guished cover all the letters shown on your letter copy-book relative to this Marshall loan?

A. Yes, sir; I am sure they do.

Q. Will you show me, if you please, the letter of the 31st of March, 1877.

(Witness hands book to counsel.)

Q. Will you be kind enough to read that letter.

"31st MARCH, 1877.

"J. W. Paxton, Wheeling, West Virginia.

"DEAR SIR:"——

I will say this is copied from a form, shall I supply that form?

Q. You may explain if you like that it was copied from a
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A. This letter was written on a form we have for acknowledging letters—"28," that relates to the date of the letter acknowledged—"we will communicate with the parties at once your *ultimatum*.

"Yours respectfully, BAIRD & BRADLEY."

Q. Was the original of that letter sent to Mr. Paxton?

A. Yes, sir.

Q. You have given its date, I believe, the 31st March, 1877?

A. Yes, sir; the 31st of March, 1877.

Q. Will you please show me the next letter of April 2d, 1877?

(Witness hands the letter-book to counsel.)

Q. Be kind enough to read that letter, Mr. Baird; give its date and signature.

A. Shall I read the part that refers to something else?

Q. You may explain that any way so it will be intelligible.

A. It is dated "April 2d, 1877. James W. Paxton, Wheeling, West Virginia. After allouding to another subject it says: "Mr. Marshall is trying to get a loan at 7 per cent. and pay up. We shall be surprised if he can do so, but he thinks he can." The sig-
371 nature is written on a form also; the signature is printed.

Q. Was that letter sent to Mr. Paxton?

A. It was.

Q. At about its date?

A. At its date; yes, sir.

Q. Will you show me, please, the letter of May 2d?

(Witness hands letter-book to counsel.)

Q. That appears to relate to the same subject; please read that, Mr. Baird.

A. Referring to a letter from Mr. Paxton of 28 ult.—that is, of April. Bond and trust deed of James M. Marshall, $10,000, due February 13, 1877. We note your instructions and will inform Mr. Marshall of the same.

Yours truly, BAIRD & BRADLEY.

Q. Will you show me, please, next the letter of May 15th, 1877?

(Witness hands book to counsel.)

Q. Please read it.

"Your favor of the 11th inst. is received and contents noted. Will look into the matter and write you in a few days.

"Respectfully yours, BAIRD & BRADLEY."

Q. Will you show me the letter of June 8th, 1877, Mr. Baird?

Witness hands book to counsel.

Q. Please read the letter in full without omission.

372 A. This is written on a blank also acknowledging his letter of the 6th inst.:

"Mr. Tyler has written us that he will be here in a few days, and will then pay the interest, and arrange the extension as proposed. We are looking into the Marshall matter, and will write you about it in a few days, and will also send statement of account.

"Respectfully yours, BAIRD & BRADLEY."

Q. Have you Mr. Paxton's letter of the 11th of May referred to in yours of the 15th there?

A. I don't see it; I don't find it here, sir.

Q. It is referred to in your letter of May 15th, when you say "your favor of 11th inst.;" it may be a clerical error in the date; have you one of that date?

A. I don't find the letter here, sir; I can have a further search made to see if we can find it.

Q. Then I understand up to this time you have not the letter of Paxton to Baird & Bradley of May 11th referred to in yours of May 15th to him?

A. I have it not present here; it is possible it is in the office overlooked.

373 Q. Will you please give the dates of such letters as you have in the originals from Paxton, the complainant, to your firm of Baird & Bradley relating to this Marshall loan?

A. You mean within this year?

Q. Yes; during 1877 we will say.

A. January 19th, 1877; March 8th, 1877; March 20th, 1877; March 28th, 1877; April 6th, 1877; April 28th, 1877; June 6th, 1877.

Q. May I look at those?

(Witness hands letters to counsel.)

Q. I show you this letter of April 6th, 1877, referred to by you, and ask you in whose handwriting it is.

A. That is Mr. Paxton's handwriting.

Mr. PADDOCK: I will read it in evidence if there is no objection.

Mr. WATERMAN: No, sir; not to that.

Mr. PADDOCK:

"WHEELING, *April 6th*, 1877.

"Messrs. Baird & Bradley.

"GENTLEMEN: I inclose coupon of W. H. Hoyt, $400, April 1st, paid by remittance of yours of 2d inst.

"I hope Mr. Marshall may succeed in securing the loan to pay off mine, but I want him to understand that either that or payment of back interest and six months in advance at 8 per cent. must be done during this month.

374 "Very respectfully, J. W. PAXTON."

Q. Will you be kind enough, Mr. Baird, to make a further search for the letter of May 11th, 1877, from Paxton to your firm?

A. Yes, sir.

Q. And, if found, give me notice of the facts?

A. Yes, sir.

Q. Since your answer to the question concerning the letter of May 11th from Paxton have you made a further search for that letter?

A. I have.

Q. What did you find in regard to it?

A. I find the letter does not refer to the matter of Marshall at all, but to another matter.

Q. Mr. Baird, bearing in mind the date of this loan to Mr. Marshall, which appears to have been the 13th of February, 1872, please state whether, prior to that time, you had been acquainted with Mrs. Susan C. Marshall.

A. I had not.

Q. Do you remember of having seen her prior to that time?

A. I don't remember to have seen her at all. I may and may not have seen her.

375 Q. You have no recollection of having seen her?

A. I have no recollection of seeing her.

Q. At that time?

A. No, sir.

Q. Have you any recollection of seeing her at any time prior to the trial of the forcible-detainer suit?

A. No, sir.

Q. Did you see her at that time?

A. Yes, sir.

Q. You were a witness in that case yourself, were you not?

A. Yes, sir.

Q. Please state, in a general way, what took place in the office of Baird & Bradley between Mr. Marshall and yourself prior to the disbursement of the money on this loan, with regard to the negotiations of the additional loan of $5,000. There had been a prior mortgage, had there not?

A. Yes, sir.

Q. On the same property?

A. A prior mortgage of $5,000, as I remember now; it was noth-

ing except the usual routine of such matters. Mr. Marshall wanted to get some money and proposed that we should negotiate for him an additional loan, and of course we went through the ordi-
376 nary preliminaries of negotiating with Mr. Marshall until the loan was finally made. I don't remember anything peculiar in it at all.

Q. That loan was the loan of $10,000 in controversy, was it not?

A. Yes, sir.

Q. Of that ten thousand five thousand was a new disbursement, was it not?

A. Yes, sir.

Q. The other five thousand was an antecedent loan of that amount, was it not?

A. I think it was, sir.

Q. By Paxton to Mr. Marshall?

A. Yes, sir.

Q. I believe you have already stated that you did testify in the United States court on the trial of the detainer suit?

A. I did; yes, sir.

Q. Do you remember the fact of Mr. Marshall making his appearance at your office prior to the new loan and entering into this negotiation for a new loan?

[A.] ——.

Q. You knew Mr. Marshall at that time, did you not?

A. Yes, sir.

Q. How long had you known him?

A. Well, I had known him for at least fifteen years?

Q. For whom did Baird & Bradley disburse the money
377 arising from this new loan?

A. I think to Mr. Marshall, as far as I now remember; it was to him or according to his directions; I cannot say all the money was actually paid directly to him, but I presume it was.

Q. Was any of it paid to Mrs. Susan C. Marshall by Baird & Bradley?

A. Not to my recollection.

Q. What was the date of the actual closing of the transaction in the sense of receiving from Marshall the bond and deed of trust, and disbursing to him, or beginning to disburse to him, the funds?

A. I could not answer that.

Q. Can you by referring to the deed of trust itself?

A. Perhaps not as to a day; it might have been—it was probably—a few days after the date of the deed of trust awaiting the usual examinations, after the papers were executed, before paying the money; it was very soon after.

Q. Would your cash-book show that?

A. Yes, sir.

Q. Are you now speaking from a reference to your cash-book or your usual way?

A. No, sir; I am speaking of the usual way.

Q. Rather from a reference to your custom than the fact,
378 is it not?

A. Yes, sir.

Q. Will you be kind enough to look at your cash-book and ascertain the date of your disbursement?

A. Yes, sir.

Q. Can you do it within a few moments?

A. I think I can if I can get at the books.

Q. Well, what do you find?

A. Well, I find that $3,000 was paid February 14th, 1872, to Mr. Marshall, and the balance was passed to his credit, at his own request, with us and paid to him March 14th.

Q. When was it passed to his credit, Mr. Baird?

A. Well, it was the time of the negotiation.

Q. On the 14th of February?

A. Yes; that is what it would be practically.

Q. Then on the 14th of February the balance was subject to his disposal, was it not?

A. Yes, sir.

Q. Was the deed of trust and bond in controversy prepared in the office of Baird & Bradley, under their direction?

A. They were.

Q. State whether or not you handed them to Mr. Marshall prior to the 14th of February.

379 A. Well, I have no doubt it was prior to that; it was prior to that.

Q. Do you remember handing the security papers to Mr. Marshall prior to the 14th of February?

A. You mean this?

Q. Yes.

A. I don't remember it; no, sir.

Q I understand you to say that it was prior to that that they were handed to them?

A. Well, I have no doubt of it, sir; that is the best of my knowledge and belief that they were.

Q. For what purpose were they handed to him?

A. To have him execute them.

Q. By whom were they handed to him?

A. I don't know, sir.

Q. By any one in your office?

A. By some one in the office; yes.

Q. Was that the usual course of business with regard to matters of that sort?

A. To hand them?

Q. Yes, to hand them to the party who might want the loan, so that he might have them executed?

A. Yes; that is almost universal.

Q. Do you recollect, Mr. Marshall, bringing back the deed of trust and bond on the 14th of February, when he received the money?

A. I don't distinctly remember the act myself.

380 Q. By whom was the deed of trust placed on record?

A. I don't know that I can answer that question.

Q. What would your routine require in that respect?

A. To be left with us and we should place it on record. That would be in the ordinary course of such business.

Q. Do you know of any exception to that mode of transacting business; do you recollect of any instance?

A. Oh, I think I have known —; very rarely, though.

Q. You recollect of none in this instance?

A. No, sir.

Q. When was that deed recorded or filed for record?

A. On the 14th day of February, 1872.

Q. Then, as I understand you, prior to that date Mr. Marshall had received the deed of trust from your firm, or from some one acting under general direction in your firm, and had taken the deed of trust away from your office to have it executed, and that on the 14th of February he brought it back and it was delivered to the firm of Baird and Bradley, and the transaction closed by the disbursement of the money, and on that day the deed recorded. Is that a

381 fair statement of your recollection of the matter?

A. I don't recollect that; that might have been the case and it might not have been the case.

Q. In what respect is it incorrect?

A. Well, the papers might have been executed in our office; that is a possibility and very often is done; in fact I may say it is usually done.

Q. I am speaking of a single paper in this instance, the deed of trust in controversy. Have you any recollection that it was executed in your office?

A. No, sir; but I have no recollection definitely that it was taken away from the office and brought back executed. As a rule I may say that papers of this kind in our office are executed in our office.

Q. I am not asking you for that, Mr. Baird, especially; I am not asking you for your rule at present.

A. Our rule was the same then.

Q. I still understand you to say that you have no recollection that this paper, the deed of trust in controversy, was executed in your office.

A. I have no distinct recollection to that effect. I have not at this moment any distinct recollection as to where this deed of trust was executed or how. I have not thought anything about it.

382 Q. Would it be inconsistent with your routine for Mr. Marshall to have obtained the deed on the 13th of February for the purpose of having it executed and to bring it back to you?

A. It would not be absolutely inconsistent with it; it would not be what I should say [was] in accordance with the ordinary routine.

Q. If, in fact, he had that deed in his possession on the thirteenth of February, 1872, unexecuted, do you know of any mode or agency by which he could have obtained it without the consent of Baird and Bradley?

A. No, sir; I don't.

Q. Where was Mr. Shortall's office, do you remember, at that time, Mr. Baird, with reference to the locality of yours?

A. I think it was on Wabash avenue, south of where we were.

Q. Some distance away?

A. No, sir; no, I shouldn't—it might have been two blocks away.

Q. Mr. Baird, will you state whether, at the time of the negotiation of this loan, the firm of Baird and Bradley were aware that this property was the homestead of Mr. & Mrs. J. M. Marshall?

383 A. I think we were, sir.

Q. For how long a time had you been aware of that fact?

A. Oh, I guess a number of years.

Q. Were you aware of it at the date of the prior mortgage which has been referred to?

A. I think so.

Q. Were you aware of it at the date of the *date of the* mortgage prior to the prior mortgage?

A. I think so, sir. I think at the first mortgage it was understood. I don't know as we—I have an impression that at the first mortgage the premises were not completed.

Cross-examination by Mr. WATERMAN:

Q. Mr. Baird, the letter from Mr. Paxton of May 11th—will you please explain why you did not produce it here at first?

A. Because it did not relate to the subject——

Q. Of the Marshall loan?

A. Of the Marshall loan, yes. The answer to that letter was produced here under a misapprehension, and the answer to that letter of May 11th refers only in general terms to the letter of May 11th without stating the subject-matter of it or referring to the sub-

384 ject-matter, and by some means it was——

Q. Mr. Baird, will you please give the dates of all the letters to Mr. Paxton which you have produced under this notice, besides those whose dates you have already given?

A. January 29th, 1876; February 5th, 1876; February 12th, 1876; May 24th, 1876; June 9th, 1876; October 16th, 1876; November 24th, 1876; December 9th, 1876; December 13th, 1876; December 27th, 1876; January 16th, 1877; March 10th, 1877; March 24th, 1877; that is all.

Q. Were the originals of those letters mailed to Mr. Paxton by you at the times respectively at which they bear date?

A. Yes, sir.

Q. Will you now please give the dates of the letters from Paxton produced by — under this notice other than those which you have read?

A. February 1st, 1876; February 14th, 1876; May 5th, 1876; May 20th, 1876; June 12th, 1876; August 30th, 1876; October 6th, 1876; October 12th, 1876; November 15th, 1876; November 27th, 1876; December 15th, 1876; December 29th, 1876; January 19th, 1877; March 8th 1877; March 20th, 1877; March 28th, 1877; April 28th, 1877; June 6th, 1877.

Q. Were those letters respectively received by you from Mr. Paxton about the time they bear date?

385 A. Yes, sir; in the course of mail.

Q. How as to the letter of April 6th, 1877; when was that received?

A. I have no means of saying specifically, otherwise than in the due course of mail

Q. As were the others?

A. As were the others.

Q. Mr. Baird, look at the notice now shown you, dated October 31st, 1880, and signed Paddock & Ide. (Handing witness paper.)

A. Yes, sir. (Said notice was marked by the notary "Exhibit A.")

Q. Say what search, if any, you have made for the letters and papers referred to in that notice.

A. I have made search and have produced all that I find.

Q. Have you in your office, or under your control, or have you any knowledge of any letters or papers referred to in the notice other than those you have produced?

A. No, sir.

Q. So far as you know, did the firm of Baird & Bradley, or either of them, ever have any letters or papers referred to in that notice, other than you have produced?

A. No other, to my knowledge.

Q. Mr. Paddock has questioned you as to letters said to

386 have been written by James M. Marshall, one bearing date April 7th, 1877, and the other April 17th, 1877, and concerning which letters Mr. J. M. Marshall has testified in this case; have you seen Mr. Marshall's testimony in that regard?

A. I think I have.

Q. Did you ever receive any such letters? Did Messrs. Baird & Bradley, or either of them, ever receive any such letters?

A. Not to my knowledge; I never did, certainly.

Q. When did you first hear of the existence of any such letters, or that it was claimed that any such letters had ever been written?

A. Well, within two or three months, I think, or since this suit has been commenced.

Q. Since this suit was commenced?

A. Yes, sir.

Q. If any such letters have been received in the office of Baird & Bradley or by them, would you have been likely to have known of it?

A. I should have known of it, sir.

Q. What, during the year 1877 and since, was and has been your custom as to preserving letters upon business matters in your charge addressed to you?

A. Our rule is to preserve them—everything.

Q. And in what way do you preserve them so as to be able to refer to them?

387 A. We have an ordinary letter-file, such as is used by business men to preserve letters?

Q. Indexed?

A. Indexed.

Q. If any such letters had been received by Baird & Bradley and were in their office, would there be any difficulty in finding them?

A. None at all.

Q. Mr. Paddock has called your attention to a letter written by your firm to James M. Marshall, under date of March 31st, 1877, in which you quote certain language of Mr. Paxton—among other things, this: "It is useless for him," Mr. Marshall, "to talk of renewing at a less rate of interest till he pays that now due." At that time was there any interest on this loan—this $10,000 loan—due from Mr. Marshall?

A. Yes, sir.

Q. How long had such interest been due at that time?

A. What is the date of that letter?

Q. March 31st, 1877.

A. Since the 13th of February, I think.

Q. 1877?

A. 1877.

Q. Now, did Mr. Marshall or any one else ever pay up the interest that was then due?

388 A. No, sir.

Q. Can you refer to the date of the letter written by Mr. Paxton in which he uses the language quoted in this?

A. I have it here, sir.

Q. What is the date of it?

A. March 28th.

Q. 1877?

A. 1877.

Q. Mr. Paxton, as you quote him further, says: "If he will do that and pay six months' interest in advance at 8 per cent." I ask you if Mr. Marshall ever paid any interest in advance on this loan after this letter was written to him?

A. No, sir; he never did.

Q. Mr. Paxton, as quoted by you further, says: "I will permit the loan to run at that rate of interest, provided that the taxes and insurance are kept up; otherwise I must proceed to foreclose." I will ask you whether after that time the taxes and insurance on that property were kept up by Mr. Marshall or any one else in his behalf?

A. No, sir; they were not.

Q. What was the fact in regard to the neglect, if any, of Mr. Marshall to pay taxes and insurance on the property after that?

389 A. Well, in regard to taxes he had been in default in the matter of taxes for every year—for some of the taxes for every year since and including the year 1873.

Q. Well, how was he after that date?

A. He never paid the general taxes, any of them, after that date.

Q. How was it as to insurance?

A. The insurance went by default on the following October.

Q. That is, he neglected to pay?

A. Yes, sir; October 1st, 1877; never paid after that date.

Q. Mr. Baird, was there any extension of this $10,000 loan ever made?

A. No, sir.

Q. You have been asked as to who filed this trust deed for record; may it not have been given by your firm to the abstract makers and by them filed for record?

Mr. PADDOCK: I object to any question which calls for anything else than the memory of the witness as to that fact, as to what was done with regard to the filing of this deed for record.

A. Yes, sir.

Mr. WATERMAN:

Q. Have you any recollection as to having had the abstract of title of the property continued and brought down by the
390 the abstract makers to the time this loan was made?

A. Have you got the abstract there?

Q. Yes.

A. I have no special recollection about this matter.

Q. Mr. Baird, did you have any knowledge as to this property being the homestead of Mr. & Mrs. Marshall other than what James M. Marshall had told you?

A. Oh, I understood that was where he lived; he lived on that property.

Q. From whom did you so understand?

A. Well, from him; I had no other knowledge except what came from him.

Q. Do you remember whether the first mortgage upon this property, made through your agency, was made for the purpose of putting improvements upon the premises?

A. It was made for the purpose of putting *on* improvements on the premises, or for paying for improvements being put on, or they were just put on.

Q. Look at this morgage, Mr. Baird (handing witness paper).

A. Yes, sir.

Mr. WATERMAN: The mortgage shown to witness bears date April 1st, 1863, between James M. Marshall and Susan C. Marshall, his wife, of the first part, and Nathan B. Ives, of the second
391 part, recorded April 11th, 1863.

Q. Please state, Mr. Baird, if you remember of the making of that mortgage.

A. Yes; I do.

Q. What was the consideration of that mortgage?

A. Fifteen hundred dollars.

Q. To whom paid?

A. To Mr. Marshall.

Q. At what time, about?

A. About the 1st day of April, 1863.

Q. Now, Mr. Baird, in what way, if at all, was the amount secured by that mortgage ever paid?

A. This was paid, according to my best recollection, out of the subsequent loan that was made upon the same property.

Q. To whom was that subsequent loan made?

A. To Mr. Marshall.

Q. By whom was that subsequent loan?

A. By Mr. Paxton.

Q. When was the subsequent loan made?

A. February 13th, or about, 1867.

Mr. WATERMAN: I now offer in evidence this mortgage by James C. Marshall and Susan C. Marshall, his wife, to Nathan B. Ives, dated April 1st, 1863, and the certificate of acknowledgment
392 thereto appended, dated the 10th day of April, 1863, signed by John G. Shortall, notary public, and with his seal thereto appended, and the certificate of record thereon, and let it be marked "Exhibit B."

(Said mortgage marked Exhibit B.)

I now produce and offer in evidence the deed of trust, dated 13th day of April, 1867, by Susan C. Marshall and James M. Marshall to Lyman Baird, recorded on the 18th day of February, 1867. I offer this mortgage and the certificate of acknowledgment thereunto appended, dated the 15th day of April, 1867, signed by John G. Shortall, notary public, and having his seal annexed, and also the certificate of the recording.

(Marked "Exhibit C.")

Q. Do you remember, Mr. Baird, about the making of this trust deed?

A. Yes, sir.

Q. What was the consideration of that trust deed?

A. This was $5,000.

Q. To whom was that paid?

A. To Mr. Marshall.

Q. In what way?

A. As I remember, by the $1,500 previous loan, and the difference in money.

Q. There was $3,500 paid to him in money and $1,500 went to take uy this mortgage to Ives?

A. Yes, sir.

393 Q. By whom was the five-thousand-dollar loan upon this deed of trust, dated February 13th, 1867; by whom was that money loaned?

A. Mr. Paxton.

Q. The complainant?

A. The complainant; yes, sir.

Q. In what way, if at all, Mr. Baird, has the loan secured by this deed of trust ever been paid?

A. This is the 1867 one?

Q. Yes.

A. That was a part of the loan for $10,000, if it was paid at all.

Q. Has anything been paid on this deed of trust, dated February

13th, 1867, other than by the making of the deed of trust dated February 13th, 1872?

A. No, sir.

Q. Mr. Baird, I presume I misled you in the question. I me-nt to have asked, & I presume you mean to testify, that nothing of the principal of either the loan of $1,500 or the loan of $5,000 had ever been paid except by the making of the subsequent incumbrances; was not some interest paid on these loans?

A. The interest was paid on these two first loans in full.

Q. Well, was any portion of the principal of either of the loans ever paid, except in the way you have described?

394 A. No, sir; except by renewal.

Q. By subsequent loans?

A. Yes, sir.

The further taking of this deposition was then adjourned until 2 p. m. to-morrow, Wednesday, 8th.

395 DEC. 8TH, 1880.

LYMAN BAIRD was called, and testified as follows:

Direct examination by Mr. WATERMAN:

Q. Have you any explanation that you wish to make regarding anything that you testified to yesterday?

A. In regard to the first loan of $1,500.00 on this property in controversy, in thinking more about it *that* I do not feel so positive that it was actually a part of the second loan; that is, that the second loan was a renewal; but I should not be ready to say that it was, not because I have always had that impression—that, of course, was a good many years ago; it was 13 years ago—but I have never had any other impression or idea about it than that it was, and I think I testified to that fact before, and Mr. Marshall never disputed it. All I would say now certainly is that it may or it may possibly not have been a part of that second loan; but as to the second loan—that is, the loan of $10,000.00—that I am actually sure was made up of the previous $5,000.00 and of the additional money.

Q. Mr. Baird, you were asked some questions about the examination of this title. On this first loan of $1,500, which was made

396 by you for a Mr. Ives, you being brokers, who examined the title for you?

A. Mark Skinner.

Q. And I understood you to say, in answer to Mr. Paddock, that the abstract of title which he examined was burned in the fire of 1871?

A. I understand so.

Q. At any rate, you have never seen it since?

A. We have never seen it since.

Q. Then I understand you to say, in making the loan of 1867 and the loan of 1872, the abstract was merely examined in your office; it was not submitted to counsel?

A. I think not. I think we relied upon the previous examination,

there having been no changes derogatory to the title since the original loan.

Q. Now, Mr. Baird, won't you state when you or your firm had any information that the state of this title was such that Mr. and Mrs. Marshall could not convey a fee-simple title to the premises?

A. The first time we had any intimation of *of* any doubt about that was, I think, in May, perhaps, of 1877, or about that time, when Mr. Marshall came into my office one day quite excited and said somebody had——

Mr. PADDOCK: I think, for the purpose of saving our rights, we will object to any conversation between Mr. Marshall and the witness.

397 The WITNESS: And said that somebody had been looking at the abstract, and said that he could not convey a good title to the property. I understood that he had been proposing to make a loan upon the property to pay off Mr. Paxton. We didn't believe it, but thought he was unduly excited, and then we looked into the matter for the first time after that. Before that we never had [the] slightest doubt, nor was any question raised on the subject by any person whatever.

Mr. WATERMAN: Was that before or after the $10,000.00 incumbrance matured?

A. That was after it matured.

MR. WATTERMAN (to Mr. Paddock): I shall insist that the letter written by J. W. Paxton under date of April 28th, 1877, and the letter written by him, dated June 6th, 1877, shall go in as evidence, you having called for their production.

Objected to.

(The letters were read by the witness, as follows:)

"WHEELING, *April 28th*, 1877.

"Messrs. Baird & Bradley.

"GENTLEMEN: Please find herewith James M. Marshall's bond, due 13th February last, for $10,000.00, and also six months' interest coupon, due at same time, for $450.00; also trust deed securing the same. Please notify Mr. Marshall at once that you have re-
398 ceived them, and if he does not promptly pay up back interest, and also interest for the current 6 months, at 8 per cent., proceed to sell with the least possible delay, keeping me advised of the situation, and especially the day of the sale, as soon as determined.

"Very respect*ively*, J. W. PAXTON."

"WHEELING, *June 6th*, 1877.

"Messrs. Baird & Bradley.

"GENTLEMEN: I am in receipt of yours of the 31st ulto., advising insurance renewals. Please advise Mr. J. K. Tyler that 6 months' interest, $495.00, due 24th ulto., must be paid without delay. As heretofore stated, I will not consent to that debt accumulating, and

must take steps to foreclose unless interest is paid promptly. What has been done towards closing the Marshall matter? It is probable I will go from home in a week or 10 days, to be absent some time, and would like to hear of these matters before going, and also, if convenient, have statement of account.

"Very respectively, J. W. PAXTON."

Q. As to the $3,000.00 actually paid out on the 14th of February, will you state whether that was paid out before this deed was given to you as being executed and acknowledged by Mr. and Mrs. Marshall?

A. Afterwards.

399 Q. So far as you know, has Mr. Paxton, in regard to these loans to Mr. Marshall, ever had any interviews personally with Mr. Marshall or Mrs. Marshall?

A. I am not aware that he ever had; I never knew of any interviews between them.

Q. He has resided all the time since he began to have a lien upon this property in Wheeling, hasn't he?

A. Yes, sir; Wheeling, [West] Virginia.

Q. When did you first have any knowledge or intimation that it was claimed that the deed of trust dated February 13th, 1872, had not been duly acknowledged by Mr. and Mrs. Marshall?

A. I think about two or three days before I was called upon to testify in the forcible-detainer suit.

Q. How long ago was that forcible-detainer suit tried?

A. I don't remember.

Q. I will ask you if it was not tried in March, 1880?

A. I think it was.

Q. Do you remember, Mr. Baird, whether Mr. Marshall brought that deed back to the office after it had been acknowledged?

A. I have not now any distinct recollection about that.

Q. Do you remember who filed it for record?

A. I do not.

Q. Do you remember what you did with it immediately after getting it, after it had been acknowledged?

400 A. No, sir.

Q. After this trust deed was made and that abstract of title was prepared, with whom did the abstract remain?

A. With us.

Q. Please state whether it is customary with you to have an abstact of title remain with you while a loan is outstanding?

A. That is our custom invariably, of course; we loan them to persons sometimes afterwards to be returned.

Q. Mr. Baird, will you please state whether, if you had had any knowledge or information that in reference to that deed of trust dated February 13th, 1872, Mrs. Marshall had not actually appeared before the notary and acknowledged the same, *whether* you would have made any loan or done anything upon the strength of it?

A. Nothing at all; we never should in any such case.

Q. Through whom was the interest that matured on the loan secured by that deed paid to Mr. Paxton?

A. Through our firm.

Q. Paid by whom?

A. By Mr. Marshall, all that was ever paid.

Q. Up to what date, Mr. Baird, was the interest bond secured by this deed of trust?

A. It was paid up to August 13th, 1876.

Q. Has anything, either of principal or interest, on said bond been paid since that time?

401 A. Nothing on either.

Mr. WATERMAN: I offer in evidence the publication certificate, dated the 14th day of February, 1879, marked "Exhibit 1;" and I also offer a trustee's deed, dated the 8th day of March, 1879, made by Lyman Baird, trustee, marked "Exhibit 2."

Q. Mr. Baird, was Mr. Paxton present in the city at the time the sale described in this trustee's deed was made?

A. He was not.

Q. Do you recollect who acted for him and made the deed at that sale?

A. I don't remember now; probably Mr. Marsh.

Q. Mr. Baird, in what manner had the instructions which were given by Mr. Paxton as to having this property sold at trustee's sale, and as to the amount to be paid for at such sale, been given—in writing or otherwise?

A. I think verbally.

Q. Were they given to you?

A. I am not sure whether to me in person or whether to some one in the office; it was through our firm.

Q. Can you tell whether Mr. Paxton, at the time of that sale, had any intimation of any claim that this deed of trust had not been properly acknowledged?

Object- to by counsel for defendant unless it is limited to the knowledge of the witness.

402 A. Mr. Paxton did know from information received from us that there was a question.

Q. As to whether the deed had been properly acknowledged?

A. Oh, I didn't understand you. He had no knowledge that I am aware of in regard to that.

Q. That the deed had not been properly acknowledged?

A. No, sir.

Mr. WATERMAN: The deed of trust introduced by me in evidence dated February 13th, 1867, and the mortgage dated April 1st, 1863, were produced by Mr. Paddock at my request, he stating that he obtained them from James M. Marshall, and, so far as he is aware, they never were in custody or in the knowledge of Mrs. Susan C. Marshall until produced on these trials or since the bringing of the forcible-detainer suit.

Q. Mr. Baird, this deed of trust and this mortgage dated, respectively, February 13th, 1867, and April 1st, 1863, were formerly in your custody, were they?

A. They were.

Q. When did you surrender the mortgage, and to whom?

A. I don't remember; to the best of my knowledge and belief they were both surrendered when the subsequent loans were made to Mr. Marshall.

403 Q. At the respective times?

A. At the respective times.

Q. Now take the deed of trust made February 13th, 1867. For what or upon what was that surrendered?

A. That was surrendered in part consideration of the new mortgage given February 13th, 1872, for $10,000.00.

Q. Do you remember whether you executed a release deed of this deed of trust dated February 13th, 1867?

A. I executed releases of the mortgage of April 1st, 1863, and of the deed of trust of February 13th, 1867.

Q. Upon what consideration or upon the receipt of what did you execute the release of the deed of trust of February 13th, 1867?

A. Upon the consideration of receiving the deed of trust of February 13th, 1872.

Q. Now, Mr. Baird, at the time of executing the release of the deed of trust of February 13th, 1867, should you have executed it if you had any knowledge or intimation that that deed of trust dated February 13th, 1872, had not been duly and properly executed in person by both Mr. and Mrs. Marshall?

A. No, sir; I should not.

Q. Then in what you did under the deed of trust of February 13th, 1872, you relied entirely upon the truthfulness of that certificate of acknowledgement?

A. I did.

404 Q. Mr. Baird, can you tell whether you released the deed of trust of February 13th, 1867, before or after this abstract of title was returned to you showing the record of the deed of trust of February 13th, 1872?

A. It was not done until after.

Q. Mr. Baird, if the abstract had shown or contained any notice in any way that the deed of trust of February 13th, 1872, had not been duly or properly acknowledged by Mr. and Mrs. Marshall would you have released the deed of trust of February 13th, 1867?

A. I should not.

Q. Would you have paid out any money on the deed of trust of February 13th, 1872, if you had had any notice of any such want of acknowledgement of it?

A. Not a dollar.

Q. How frequently did you see and converse with Mr. Marshall concerning the payment of the amount secured by the deed of trust of 1872 at about and after the time of its maturity?

A. Well, too many times to mention.

Q. Do you mean a great many times?

A. A great many times; yes, sir.

Q. Now, in any of those conversations which you had with Mr. Marshall concerning the payment of the amount secured by that deed of trust, did he ever tell or intimate to you in any way that the deed of trust had not been properly acknowledged by his wife?

A. Not in any way or form.

405 Q. Prior to making the sale under the trust deed did you notify Mr. Marshall that you were to make such a sale?

A. Yes, sir. I remember once distinctly telling him that we were directed to proceed unless the payment was made.

Q. These conversations that you have spoken of having had with him respecting the payment of the amount due under the trust deed, through how long a period did they run?

A. Well, from the time of maturity, especially for, say, three or four months, or four or five months, and more, afterwards, Mr. Marshall saying all the time that Mr. Paxton had better keep still, and he should pay it all; he expected to have some good luck, and he would be all right if he would only keep still for a while.

Adjourned to ——.

Complainant offered in evidence trustee's deed from Lyman Baird, trustee, to James W. Paxton of premises in controversy, dated March 8, 1879, recorded in book 846 of records, page 53, and certificates of acknowledgement and recording marked "Exhibit 2."

Offered also notice by Lyman Baird, trustee, of sale of said premises under trust deed, dated February 13, 1872, and certificate of publication of the same by Wm. Pennhixon, publisher, marked "Exhibit 1."

406 DECEMBER 20TH, 1880—3 p. m.

Parties met pursuant to notice; whereupon LYMAN BAIRD was recalled and his direct examination resumed by Mr. WATERMAN as follows:

Q. Mr. Baird, have you any knowledge as to when Mr. Paxton first had any information to the effect that Mr. and Mrs. Marshall could not convey a good fee-simple title to this property?

A. Yes, sir; it was in the summer of 1877, June or July, I should say.

Q. In what way did he learn it?

A. He was told by us.

Q. By Baird and Bradley?

A. By Baird and Bradley; yes, sir.

Q. Now, when did Baird and Bradley first have such information?

A. It was a little before that; about that time, or a little before.

Q. From whom did they first derive any such information?

A. From Mr. James M. Marshall.

Q. How did Mr. Marshall give then such information?

A. He came into the office, I remember, one day and seemed to be quite excited, and said that some one had informed him that he could not make, or doubted if he could make, a good fee-simple title to that property.

407 Q. Did you learn from Mr. Marshall at that time whether such information or understanding on his part was new to him?

A. Oh, entirely new. He expressed his great astonishment and surprise about it. He said, as I remember, that the papers placing that title in Mrs. Marshall were prepared in the office of Hoyne and Lewis, I think, was the name.

Mr. PADDOCK: We will note our objection to the declaration of Mr. James M. Marshall.

The WITNESS: And he said he never had a suspicion of it before, or anything of the sort.

Mr. WATERMAN: In what year was that statement made?

A. That was in the summer of 1877.

Q. Was that after the $10,000.00 loan became due, or about the time it became due?

A. Oh, it was after it became due—some time.

Q. Now, Mr. Baird, after the loan became due up to the time of the forceable detainer suit, did you have many conversations or negot-ations with Mr. James M. Marshall about the payment of this $10,000.00 encumbrance?

A. Oh, yes, sir; a great many. I saw him a great many times about it, and he said, "Keep still, wait, and be easy;" and he was going to be out of his troubles and going to make money, and
408 the thing would be all paid up right.

Q. After this time at which he informed you what he had heard concerning his inability to make a title to that property up to the time of the forceable-detainer suit, how many times should you say he promised to pay the loan or talked so with you concerning it?

A. Oh, I don't know; a great many times; I could not give the number.

Q. Now, did you have any conversation with him about your intention to sell out under the trust deed or your intention to commence action of forceable detainer?

A. Yes, sir; I remember distinctly at one time of speaking to him over on the steps of the Reaper block and telling him that Mr. Paxton insists upon having that brought to a close or of foreclosing the property.

Q. Do you know whether about the time *of* the sale, under the $10,000.00 trust deed, took place he was aware that it had taken place or was about to take place?

A. Who?

Q. Mr. James M. Marshall. Do you know whether he was aware it had taken place after it had taken place?

A. Yes, sir; he was aware of it afterwards; he was made aware of it, of course; I don't remember exactly when.

Q. Now, in any of the conversations which you have had with him concerning the making of the foreclosure sale and the
409 fact that one had been made, and concerning the commencement of the forceable-detainer case or after the commencement of the forceable-detainer case, in any of those conversations did he

ever intimate in any way that there was any defect in the acknowledgement of the $10,000.00 trust deed?

A. No, sir; never.

Q. In any of those conversations did he ever say that it had not been acknowledged by his wife?

A. No, sir; never.

Q. Did you see him at all and talk with him concerning the matter after the forceable-detainer suit was commenced?

A. Oh, yes, sir; he said even then he was going to pay it. He said it would be paid up. He wanted me to keep easy and keep still and wait awhile and it would be all right; Mr. Paxton would get his money in full.

Cross-examination by Mr. PADDOCK:

Q. You did wait nearly two years, did you not, Mr. Baird, before insisting — the proceedings to sell out?

A. I don't remember the time; it was some time, I think; I don't remember the time now.

Q. Wasn't it about two years?

A. I presume so. The papers show, of course. We were
410 waiting all that time on Mr. Marshall's request and his promise to pay.

Q. You understood, I presume, that this property had been deeded by James M. Marshall in trust for his wife's benefit, did you not, Mr. Baird?

A. Understood when?

Q. Prior to the date of the mortgage in controversy, February, 1872.

A. No, sir; I did not.

Q. You examined the abstract which you have produced in evidence, did you not?

A. No, sir.

Q. Who did?

A. Judge Skinner; no, I beg your pardon; not this abstract he did not examine.

Q. I want to distinguish between the abstract on which the first loan was made and the abstract on which you acted in making the loan of February, 1872.

A. We examined this abstract sufficient to show that no change derrogatory to the title had occurred since the examination by Judge Skinner, at the time the first loan was made.

Q. Well, this abstract, as I see by examining it, begins with the origin of the title.

A. I say that we examined back to see that there was nothing occurred derrogatory to Mrs. Marshall's title subsequent to the other loan, the first loan, made in 1862 or 1863.

Q. I would call attention to the deed stated in this abstract,
411 number 18, described as the deed from James M. Marshall to Thomas E. Marshall, deed in trust dated November 21, 1860, recorded November 21, 1860, in book 206, at page 365; conveys lot 12 and the south 12 feet 3½ inches of lot 13, in block 3, aforesaid, in

trust for Susan C. Larmon, etc.; I will ask you whether you did not see that entry on the abstract you have introduced?

A. No, sir; I didn't look at it.

Q. Do you remember that you did not look at this?

A. Yes, sir.

Q. It is a part of the same abstract which you did look at?

A. Yes, sir.

Q. What was you- motive in not looking the paper through?

A. I said before that we examined to see that there was nothing derrogatory to the title subsequently to closing up the first loan that we made on the property of $1,500.00.

Q. Could you tell that without looking through the whole paper; did you undertake to tell that without looking through the whole paper?

A. We undertook to look so as to get at that point; that we thought was a safe point to start from.

Q. At which end of the paper did you begin this examination?

A. I don't know sir.

Q. You don't know whether you began at the bottom and
412 worked up towards the top or began at the top and worked to the bottom?

A. I have no doubt we began at the bottom and worked back; that is the way we would commence.

Q. Will you indicate some point in this paper at which that ex-examination stopped, beginning at the bottom?

A. No, sir.

Q. On reflection, would it not be more in accordance with your custom, and according to your recollection of what was done, that you began at the top and read the paper through?

A. No, sir; it would not.

Q. You are sure of that?

A. Yes, sir.

Q. What business objection was there to beginning at the top?

A. No objection; it was more convenient to do it the other way, and more natural to go back to a point that we knew about and then stop.

Q. Did you ask Mrs. Marshall about her trust interest in this land, Mr. Baird?

A. No, sir.

Q. You had no consultation with her?

A. No, sir.

Q. Did you make any enquiry as to whether James M. Marshall had not the originals of the deeds mentioned in this abstract?

A. No, sir.

Q. You called for no original deeds?

A. No, sir; we did not, as I remember.

413 Q. Made no search or enquiry as to Mrs. Marshall's rights in this property?

A. No, sir; we relied on the records for all the information we had.

Q. You were aware, I believe, that she was living on the property?

A. We were so informed.

Q. By whom?

A. By Mr. Marshall, I believe.

Q. You believed it, did you? You had full confidence in the statement, had you not?

A. I believe she was living on the property; yes, sir.

Q. Before the making of this loan, in 1872?

A. Yes, sir.

Q. Did you consult Mrs. Marshall in any way as to the disbursement of this money?

A. No, sir.

Q. You took no order or consort from her as to giving it to Mr. James M. Marshall, I suppose?

A. No, sir; of course not; it was not any of her business.

Q. Was that matter discussed between you and Mr. Marshall as to whether it was any of her business or not?

A. No, sir; he brought these papers, duly executed, as his security, and upon these he got the money.

Q. Did you ask Mr. Shortall whether Mrs. Marshall appeared before him and acknowledged that deed?

A. No, sir.

414 Q. You relied upon the certificate?

A. We would not be willing to insult him so much as to ask him such a question as that. We assumed that a man was not going to commit a criminal offence—a man like Mr. Shortell.

Q. At any rate you made no enquiry of him about it?

A. No, sir.

Q. You disbursed the money upon the strengt- of this certificate itself?

A. Upon the strengt- of the papers as executed.

Q. You have spoken about the first mortgage upon this property, by which I mean the mortgage executed in 1867, I think?

A. You mean the $1,500.00 mortgage?

Q. Yes, sir; the $1,500.00 mortgage.

A. 1862 or 3, that was.

Q. Yes, sir; '62 or '63; the second one was in 1867?

A. Yes, sir.

Q. And with regard to that mortgage you have stated that it was made for the purpose of putting on improvements on the premises or for paying for improvements being put on as they were just put on; what do you know about that of your own knowledge, Mr. Baird?

A. I know what Mr. Marshall told me.

Q. Only what Mr. Marshall told you?

A. Yes, sir; that is all.

Q. Were you the contractor for any of those improvements?

A. No, sir.

415 Q. Neither you nor your firm of Baird and Bradley put any improvements on them, as I understand it?

A. No, sir.

Q. Was Mr. Ives, the mortgagee, the contractor for any of those improvements?

A. No, sir.

Q. He did not put any of them on so far as you know?

A. No, sir.

Q. You have spoken of having released that first mortgage; do you mean that you released it personally or that — mortgage- released it?

A. I mean the mortgagee released it; we acted for the mortgagee.

Q. You have spoken of information received by Baird and Bradley concerning the state of this title and the inability of Mr. and Mrs. Marshall to convey a fee-simple title; from whom did you get that information?

A. From Mr. Marshall first. He said that it was questioned.

Q. Isn't it true, Mr. Baird, that this question or opinion, as to the lack of power, was based on the record of the deeds, as you understood it?

A. I suppose so; I think that Mr. Marshall stated that he had some original papers; I am sure he did; I am sure he said he had when he came in.

Q. In 1877?

416 A. In 1877.

Q. Did you obtain those?

A. No, sir.

Q. You felt no curiosity on that point perhaps?

A. Well, I don't remember now what was said or done about those; I don't remember ever to have seen them, though as I think of it now my impression is that he recorded something after that time, or recorded something after he spoke to us about this difficulty in the title, and he may possibly have shown us at that time some papers about that time, or shown one of us, either myself or Mr. Bradley, because I think, now as I think of it, that we made some enquiry about the original papers, where they were or something like that, but my impression is there was nothing in them that did not appear substantially in the abstract.

Q. In making this loan of February, 1872 to Mr. Marshall, did you go back to Judge Skinner to enquire of him his opinion about the title?

A. No, sir; I had no occasion to.

Q. Let me ask you was either member of the firm of Baird and Bradley an attorney-at-law at any time, or had he been practising?

A. No, sir; never.

Q. What experience had you had in 1872 with regard to this matter of examining abstracts?

417 A. Well, the experience of having been in the business of making loans on real estate for over 10 years.

Q. To what extent did you examine them yourselves at that time; was this an isolated case or had you done it in other cases?

A. We frequently did it in other cases, simple cases, where the transactions were simple, running down; we very frequently did and do it now.

Q. This you regarded as a simple transaction at that time?

A. We considered it as a simple transaction, to run back and see that nothing against the title had occured since a previous loan, the title to which had been examined by a competent attorney at the time.

LYMAN BAIRD.

418 *Francis Bradley Recalled.*

DECEMBER 21ST, 1880—2 p. m.

Parties met pursuant to adjournment; whereupon FRANCIS BRADLEY was recalled and his direct examination resumed by Mr. WATERMAN, as follows:

Q. Mr. Bradley, do you know when Mr. Paxton first learned that it was claimed that the state of the title of this property was such that Mr. and Mrs. Marshall could not make a fee-simple title to any one of it?

A. I cannot remember the date when I informed him; I have forgotten to look at that.

Q. Did you inform him?

A. Yes, sir.

Q. Was that before or after the $10,000.00 became due?

A. It was after.

Q. When did Baird and Bradley first have any such information?

A. As to the title?

Q. Yes, sir.

A. It was a little while before that; I don't know how long, but after the loan was due.

Q. From whom did they derive such information?

419 A. The first information of it was from Mr. Marshall himself.

Q. From the time that this $10,000.00 became due up to the time of the trial of the forceable-detainer suit did you have many interviews concerning the payment of that loan with Mr. James M. Marshall?

A. We had quite a number; I may say frequent interviews.

Q. Do you know whether Mr. Marshall knew before the sale of the property under the trust deed that it was to be sold under that?

A. I should not be able to testify to that point particularly, because I do not attend to that part of the business; Mr. Baird would know.

Q. Did you ever have any talk with him about its being foreclosed or being sold out under the trust deed?

A. I could not say whether I had, personally.

Q. Do you know whether after the sale he knew that it had been sold?

A. Yes, sir; I know it as well as I know anything.

Q. Well, from any conversation that you had with him?

A. I don't know that I can recall any conversation about that matter; I saw him frequently.

Q. You saw him frequently about this matter?

420 A. About this matter, about the whole matter, I don't think I can recall any personal conversation with him upon that particular point.

Q. Now, did Mr. Marshall ever, in any conversation with you, intimate in any way that there was any defect in the acknowledgment of this trust deed made in 1872?

A. Never.

Q. Did he ever intimate in any — to you that Mrs. Marshall had not acknowledged that trust deed?

A. Never.

Q. When did you first learn that anything of the kind was pretended?

A. Two or three days, or a day or two, before I testified at that trial.

Q. At the trial of the force*a*ble-detainer suit?

A. Yes, sir.

Q. In what way did you learn it?

A. You told me, I think.

Q. Do you know in what way I derived the information?

A. I don't know exactly; I suppose you learnt it over there.

Q. Do you remember whether Mr. Marshall's testimony was taken a few days prior to the trial of the force*a*ble-detainer suit?

A. I never was there when Mr. Marshall was there.

Q. Do you remember whether Mr. Marshall's testimony was taken in the force*a*ble-detainer suit, at his house, a few days prior to the trial of that suit?

421 A. I know it was said to have been taken.

Q. Won't you look at the paper now shown you and please say what that paper is? (Handing paper to witness.)

A. An application for a loan of $10,000.00.

Q. For what loan of $10,000.00 is that the application?

A. The loan dated February 13th, 1872, $5,000.00, was to pay off a loan that previously had been made on that property through us.

Q. Please to state if that is the application for the loan under which this trust deed of 1872 was made.

A. Yes, sir.

Mr. PADDOCK: What is the date of that?

A. This is dated February 9th, 1872.

Mr. WATERMAN: I offer this in evidence, to be attached as an exhibit to Mr. Bradley's deposition.

Q. Do you know whose signature that is there? (Indicating signature to paper just offered.)

A. J. M. Marshall's.

Q. The application is signed by J. M. Marshall?

A. Yes, sir.

Q. Can you tell, Mr. Bradley, whether that application was made at the time it bears date?

A. Undoubt-ly it was.

Q. Now, I see it says on it "previous liens, $5,225.00." Will
422 you please state what amount of the 10,000.00 encumbrance which was made upon that application was used to pay off the previous encumbrance?

A. That is the amount used for that purpose; the principal and the interest for six months.

Q. $5,225.00?

A. Yes, sir.

Q. Do you remember the date upon which the forcible-detainer suit was tried; was in not in March, 1880?

A. I understand it to have been; yes, sir.

Q. Now, Mr. Bradley, can you say whether this deed of trust was made at the date of this application for a loan or not?

A. I cannot say exactly what day it was made.

Mr. PADDOCK (to Mr. Waterman): What do you mean by "made?"

Mr. WATERMAN: I mean drawn in the office, prepared in the office.

A. Probably about the 13th of February; it may have been before or it may have been after.

Q. Why was this deed of trust for $10,000.00 dated the 13th day of February?

A. Because the loan of $5,000.00 expired on that day.

Q. The previous loan which this loan was to take up expired on that day?

A. Yes, sir.

Q. Mr. Bradley, can you state whether this deed of trust
423 was handed to Mr. Marshall or was taken out of the office to be executed on the 9th of February or not?

A. I could not state positively.

Q. Was there any certainty, from the application having been made on the 9th, that it was not taken out of the office until — 13th?

Mr. PADDOCK: I object to the form of the question, as it is probably a mere balancing of probabilities, and not based on any fact recollected by the witness.

A. No, sir.

Mr. WATERMAN: Have you any recollection as to the exact date upon which this trust deed was prepared?

A. No, sir; no recollection.

Q. Or the exact date at which it was taken out of the office for execution?

A. I have no recollection.

Q. Now, Mr. Bradley, from the course of the business in your office at that time, between what dates would you say this deed of trust was prepared?

Mr. PADDOCK: I have no objection to the witness saying what the course of business was, if he can, but I don't want his conclusions about it.

A. The course of business was that it might have been prepared on the 9th, or anywhere from that up to the 13th, or even after the

13th. Knowing that it was to take up a prior loan we should
424 naturally date it on the 13th, whenever it was made.

Mr. WATERMAN: Well, was the course of business such that it might have been taken out of the office for execution on the 9th, or any time from then up to the 13th or 14th?

A. Certainly, any time.

Q. I will ask you, Mr. Bradley, whether at that — it was ordinarily the case in your office that papers were actually prepared on the very date at which they bore date?

Objected to.

A. No, sir.

Q. Were they ordinarily prepared upon a day prior or subsequent to that upon which they bore date? I mean deeds of trust.

A. I don't know that I can say that it was customary to do it one way or the other, but I should rather say that generally they were prepared after the date of the papers or on the date.

Q. How was it as to trust deeds which were prepared as to renewals of loans already existing; were they ordinarily prepared upon the day upon which they bore date, or prior or subsequent to that date?

Objected to.

A. Do you mean the labor of making them?

Q. Yes, sir.

A. Usually after—prepared after, I should say.

Q. Prepared subsequently to the date on which *on which* they bore date?

A. Or on the date.

425 Q. Do you remember what Mr. Marshall said when he informed you what he had been told as to this title after this $10,000.00 loan had become due?

A. I don't think I could repeat his words; he said something like this to me: That the title to that was in Mrs. Marshall during her life, and that the deed was not in existance or at least was not on record, and he went and hunted over his papers at home and found the deed and put it on record at that time. I went over to the recorder's office to see if it was as he stated. I found the deed there and looked it over. I found it was as he stated.

Q. Did he express any surprise to you at the information he had received that he and his wife could not make a good title to the property?

A. He did; very great.

Cross-examination by Mr. PADDOCK:

Q. Mr. Bradley, did you get the idea from what Mr. Marshall said to you about this title that he had been endeavoring to make a new loan upon this property?

A. Yes, sir.

Q. Did he speak of Dr. Boone in that connection?

A. I don't remember that he did; the first time he came in I don't think he mentioned who it was.

426 Q. What information had you from any source as to the parties to whom he was then applying for a new loan?

A. I don't know, sir; I don't know that I had any information at any time.

Q. Did you understand that that was the obstacle in the way of his getting the loan?

A. Yes, sir.

Q. You spoke of having gone over to the recorder's office and seeing the record of a deed on a book.

A. I saw the deed itself.

Q. Who were the parties?

A. James M. Marshall, I think, made the deed; I think he made the deed to another Marshall; I don't remember the name.

Q. Mr. Bradley, I show you this deed, which you will observe was recorded before the fire on the 21st of November, 1860, and was again recorded on the 5th April, 1877, and ask you to examine it and state whether that is the deed you saw. (Handing witness deed marked as an exhibit to Mrs. Marshall's deposition.)

A. I could not say that it is not the deed I saw there, but I have an impression that the deed had a cover on it that I saw there; I should have said if asked the question that it had a cover on it, but I am not positive about that.

427 Q. At any rate it was a deed, as I understand you, from James M. Marshall to a grantee of the name of Marshall?

A. Yes, sir.

Q. Don't you recollect that the name of that grantee was Thomas E. Marshall?

A. I think I do.

Q. It was a deed bearing date about 1860, was it not?

A. Well, I don't recollect about that. If I had the abstract I could tell—I presume I could tell.

Q. The abstract is here, I presume?

A. I have no reason specially to doubt that was the deed I saw at the recorder's office.

Q. You have no reason to doubt that the deed I now show you is the same deed you saw at the recorder's office?

A. I could not say it was not the one.

Q. It corresponds with regard to the parties, doesn't it?

A. It appears to.

Q. And also with regard to the description of the land, doesn't it?

A. I didn't read it.

Q. That you could examine—I would like to have your answer after you have made the examination. It is the same land as that in controversy, isn't it, Mr. Bradley?

A. I think it is; I have no reason to doubt it at all.

428 Q. Do you not recollect, Mr. Bradley, that the deed which you did see there had been recorded prior to the fire?

A. I think it had been.

Q. Then it is not true to say that the deed you examined was one that had be- shown on the abstract upon which you made this loan?

You have the abstract in your hand, I believe, and you can make that examination now.

A. A deed was recorded from James M. Marshall to Thomas E. Marshall.

Q. When?

A. November 21st, 1860.

Q. Where?

A. Book 206, page 365.

Q. That deed was shown on the abstract upon which you made the loan in controversy?

A. A deed was shown without elaborating what it contained.

Q. A deed was shown on the abstract having that book and page and date of record, wasn't it, Mr. Bradley?

A. Yes, sir.

Q. Isn't that the same deed I have just shown you?

A. I presume it is.

Q. You observe that the first record of the deed I showed you just now was book 206, page 365; that is correct, isn't it?

A. Yes, sir.

Q. Had you, prior to that time, ever made any inquiry of Mrs. Marshall as to the nature or contents of the deed?

429 A. No, sir.

Q. You made that loan in February, 1872, upon the statements contained in the abstract that you hold in your hand, as I understand it, so far as this deed was concerned?

A. Well, we made it with this abstract in our hands.

Q. What other information had you concerning the contents of that deed than the abstract?

A. We did not go back of it. It was recorded in 1860 in an abstact that was burned, an abstract examined by a competent attorney for that purpose and pronounced good. How much it contained I don't know, but we were not accustomed to go back of former examinations, and this abstract did not set forth anything in this.

Q. Please read what it does show about Mrs. Marshall.

A. I speak of the record of this deed.

Q. So do I.

A. "Deed in trust dated November 21st, 1860, and recorded No-21st, 1860, in book 206, 365, conveys lot 12 and the south 12 feet 3½ inches lot 13, in block 3 aforesaid, in trust for Susan C. Larmon, &c."

Q. What the "etc." was, I understand, you did not enquire at that time?

A. No, sir.

430 Q. You knew Mrs. Marshall was living on these premises, Mr. Bradley, I understood you to say on a former examination?

A. Yes, sir.

Q. In whose handwriting is the written part of this application for the loan of February 9th, 1872, Mr. Bradley?

A. Mr. Baird wrote that.

Q. On these former occassions when money has been loaned on the

same property to Mr. Marshall there was no conference with Mrs. Marshall, as I understand you?

A. I don't remember that there was.

Q. You don't remember having called upon her with reference to her wishes in the matter?

A. I don't remember to.

Q. Or what should be done with the money to arise from the loan?

A. No, sir. I remember nothing specially about it, except that it was made to take up a $5,000.00 loan.

Q. When the $5,000.00 loan was made—which was in 1867, was it not?

A. 1867, I think.

Q. You don't, as I understand you, remember having called upon Mrs. Marshall with regard to what should be done with the money or whether she was willing to sign the deed, or with regard to any of the details of the loan, do you, Mr. Bradley?

A. I don't remember.

Q. Now, isn't it correct to say that as to that loan and the $1,500.00 loan, which was made, as I recollect, in 1863—I mean the
431 Ives loan—that with regard to the $5,000.00 loan and the $1,500.00 loan and the $10,000.00 loan, there was no conference between Baird & Bradley and Mrs. Marshall concerning the transactions?

A. I don't remember of any.

Q. What was the commission paid by Mr. Marshall, if any, on this loan?

A. $250.00.

Q. If James M. Marshall had this deed of trust of February 13th, 1872, in his possession in his house, unsigned, on the 14th of February, 1872, do you know of any means by which he could have obtained that paper without the consent of Baird & Bradley?

A. It might have been handed to the notary, as is sometimes the case; I don't remember about that.

Q. It might have been handed to the notary by whom?

A. By Baird & Bradley; I have no recollection of how it was done.

Q. You have no recollection that this was handed to the notary; have you, Mr. Bradley?

A. No, sir.

Q. Did you designate any particular notary to take your acknowledgments?

A. I don't think we did, sir.

Q. Then there would be no occasion for handing an unsigned paper to a special notary, would there?

A. Unless requested by the maker, which is sometimes the case.

432 Q. Do you remember any request by Mr. Marshall that these papers should be handed to any particular notary?

A. No, sir.

Q. You have spoken with reference to the time when Mr. Paxton

first heard of an alleged defect in this title. I suppose all you mean to say by that, Mr. Bradley, is that that is the time when you first gave him the information, so far as you were concerned?

A. That is what I refer to.

Q. You don't undertake to say, I suppose, from what source he might have had it, otherwise than through you, before that time?

A. No, sir.

Q. You can't say as to that?

A. No, sir.

Q. You don't wish to be so understood?

A. No, sir.

Q. I have asked you, I think, in regard to any conference between Baird & Bradley and Mrs. Marshall at or prior to the making of this loan; I will ask you whether, after making this loan in controversy of February, 1872, Baird & Bradley ever saw Mrs. Marshall in relation to this business?

A. I have no recollection that we saw her in reference to the matter.

Q. These conferences that you had with James M. Marshall related to what—I mean the conferences had with him after the
433 making of this loan?

A. The principal subject of conference was that he was going to pay it. He said he should pay it, but he wanted a little time to get ready and bring it about, but it would be paid; he intended to pay it.

Q. He went to work and tried to negotiate a new loan, didn't he, after this matured?

A. Yes, sir, but before that kind of talk.

Q. That was before this sort of talk?

A. Yes, sir.

Q. When was the time *when* that he was actually engaged in trying to get this new loan?

A. Well it was a little before that; I don't remember how long.

Q. Well the loan seems to have matured on the 13 of February, 1877; didn't it?

A. Yes, sir.

Q. When was the time then with reference to that date that Mr. James Marshall was endeavoring to get a new loan to pay it off?

A. I can't remember the time very well, but he was talking for time before he attempted to get a new loan; that he expected to pay it; Mr. Paxton very kindly gave him time; I cannot mention dates.

Q. Mr. Paxton gave him how much time?

A. Well, there was no definite time stated, I presume.

Q. How long was it in point of fact before Mr. Paxton began legal proceedings after the maturity of the loan in controversy; about two years, wasn't it?

434 A. Something like that.

Q. So that in point of fact Mr. Paxton did give him nearly two years' time, didn't he, Mr. Bradley?

A. Yes, sir.

Q. And isn't it true that that time was given in consequence of Mr. Marshall's solicitations and representations?

A. Yes, sir; I have no reason to doubt that it was that; Mr. Paxton was not [in] want of money; loans frequently run along for some time after they are due; capitalists do not want their money and are willing to let them run; Mr. Paxton, I think, was one of that class.

Q. If the interest is paid they are willing to let it run?

A. Yes, sir.

Q. Mr. Marshall was undertaking and promising all the while to pay the interest, wasn't he, if he could get this time to turn around and make a new loan?

A. No, sir; I don't think he was talking about a new loan during that time until near the close of that time; I don't remember that he was doing anything but letting the loan run along and paying some interest and promising to pay.

Q. He was then promising to pay the interest and asking for time?

A. Yes, sir.

Q. And he got the time, didn't he?

A. Yes, sir; it was allowed to run.

435 Q. Mr. Marshall, in point of fact, obtained this money, or $3,000.00 of it, on the 14th of February, didn't he, Mr. Bradley, of 1872; do you remember about that?

A. I can't recall now, but I did look that up. We paid him that amount at one time and I think about that time; our books will show.

Q. Then you paid him that amount without requiring the abstract to be brought down to show the deed of trust, didn't you?

A. Well, in paying the money we generally look at the index of the record before paying money; sometimes before the abstract is finished.

Q. But I am now asking you as to what was done in this very case.

A. Well, I don't remember; I have no recollection about it.

Q. Well, if the deed of trust was recorded on the 14th and if the money, to the amount of $3,000.00, was paid on that day, it was paid without having the abstract brought down, wasn't it?

A. Probably. Yes, sir; I should say so.

Q. The abstract could not, in the ordinary course of the abstract business, have been brought down on the very day the papers were delivered at your office, could*n*'-t, Mr. Bradley?

A. I think that has been done, sir; but it is not ordinarily done.

436 Q. You don't remember that it was done this time, do you?

A. No, sir.

Q. Then, in that respect, was that your usual course of disbursing funds?

A. No, sir.

Q. What made the difference in this case?

Q. We had great confidence in Mr. Marshall at the time. He had paid promptly up to that time. With what investigation we could make we did not feel that there was much resk in letting him have $3,000.00.

Q. The remainder of the cash part of the loan was placed at his disposal in your hands, wasn't it?

A. It was left to be called for at any time after the completion of the whole thing.

Redirect examination by Mr. WATERMAN:

Q. Mr. Bradley, at the time these various loans, or either of them, were made had you any knowledge of Mrs. Marshall living upon the property other than what you derived from Mr. James M. Marshall?

A. No, sir; I visited the house.

Q. Now, in the examination of the abstract of title to this property for this $10,000.00 loan how far back in the abstract did you go?

A. I have no recollection of making an examination personally; but we are not accustomed to go back of a loan that we have made.

Q. Of a previous loan?

A. Of a previous loan.

437 Q. Now, have you any recollection whatever that the memorandum of a deed shown upon this abstract from James M. Marshall to Thomas E. Marshall was called to your attention or notice at all, or that you saw it in or about the making of this $10,000.00 loan?

A. I have no recollection at all.

Q. I understand you that that is not the abstract of title which was examined for the making of the other loans?

A. That I understand. It was not.

Q. Now, you have spoken of having a conversation with Mr. James M. Marshall, after this $10,000.00 loan matured, relative to the payment of it. In that conversation did Mr. Marshall say anything as to what he should do in case he was pressed for the payment of that $10,000.00?

A. He told us several times, in talking with myself personally, and Mr. Baird was present part of the time, I think, that he would pay the loan—expected to pay it—but that if he was pressed he should fight it.

Q. Now, you have been examined as to time having been given. Was there any giving of time upon this $10,000.00 loan by Mr. Paxton other than a mere letting of the matter run along without the commencement of proceedings?

A. That is all, so far as my recollection goes.

The further taking of testimony was adjourned until notice to be given by counsel for complainant.

FRANCIS BRADLEY.

438 *Deposition of Mrs. J. M. Marshall.*

Mrs. J. M. MARSHALL, being called and duly sworn, was examined in chief by Mr. PADDOCK, and testified as follows:

Q. Mrs. Marshall, I believe you are one of the defendants in this case?

A. Yes, sir.

Q. Where do you reside?

A. 930 Indiana avenue.

Q. With your husband and family?

A. Yes, sir.

Q. How long have you lived there, on that lot?

A. About twenty years—twenty or twenty-one; I don't know exactly.

Q. Your homestead?

A. Yes, sir.

Q. You haven't any other?

A. No, I haven't any other, and never had any other. I have always lived there since I have been married.

Q. Do you remember the date of your marriage?

A. No, sir; I do not. I should say I have been married 18 years; I think 18 years the 22nd day of next November. I don't remember the dates exactly.

Q. You heard me read a deed from James M. Marshall, your husband, to Mr. Thomas Marshall?

A. Yes, sir.

Q. Were you married at that time?

A. No, I don't think—which deed was that?

439 Q. That is that deed of trust.

A. I was not married when that was made.

The COURT: Did I understand you to say you were married 18 years last November?

A. No, sir. I will be married 18 years next November, I think. I won't be sure.

Mr. PADDOCK: This deed is dated 1860.

A. That was just before I was married, because I know Mr. Marshall gave me the property before I was married.

Q. That is all the fact I wish to bring out. *If* you do not remember exactly the date when you were married, but at the time of this deed of James M. Marshall to Thomas E. Marshall?

A. No, sir. I was not married then.

Q. You were married afterwards?

A. Yes, sir.

The COURT: Do you know whether you were married at the time the deed was made from Thomas E. Marshall to yourself—the second deed; do you remember the circumstances of that deed being made?

A. No, sir. I do not.

The COURT: Well, of course that would not refresh her recollection at all; then I thought perhaps she might remember it.

Mr. PADDOCK: Did you ever see this deed yourself; do you
440 remember seeing or hearing about it?

A. No, sir. I know that the former deed, before I was married, was made, and Mr. Marshall had it made and gave it to me for my home as long as I lived, so I could not do anything to it, or he either, before I was married; and this other I don't know anything about. I never read any. I always left it to him. I don't know anything about it.

Q. Perhaps the exact date of your marriage will occur to you on reflection; if you could tell I should like to know.

A. I could find out; it is in the Bible at home. I can look.

Q. It is safe, then?

A. Yes.

Q. Now, I will come to another matter more important. I will ask you, Mrs. Marshall, if you remember signing a paper some time in the month of February, 1872?

A. I do.

Q. I will ask you on what day you signed that paper?

A. The 14th.

From here to the next question the question- and answers that I have read appear in my notes.

Q. Well, did you not go at any rate?

A. No, sir.

Q. When did you next see this paper after you signed it and your husband took it and took it from the room?

441 A. I did not see it until after I got notice. I don't know anything about the paper.

Q. I am speaking of seeing the paper with your own eyes after it passed from your room that morning.

A. Oh! I don't remember of seeing it all; I don't remember of seeing it.

Q. How well had you been acquainted with Mr. Shortall at that time; know him by sight?

A. Yes, sir; I had known Mr. Shortall for several years.

Q. And knew who he was?

A. Yes, sir; knew him personally.

Q. I understand you to say that you never made any acknowledgement of this deed.

A. I never made any acknowledgement of that deed at all to any one.

Cross-examination by Mr. WATERMAN:

Q. Mrs. Marshall, I think you said it would be 18 years on the 22nd day of November since you were married.

A. I think so; but I am not positive as to it.

Q. That is your recollection?

A. I know that I have a daughter that is 18 years old.

Q. Yes, now; might you not be mistaken about the date of your marriage?

A. Well, I told you that I was not positive; it is somewhere along there.

Q. Do you recollect where you were married?

A. Yes; I was married in the Baptist church on the corner
442 of Washington and La Salle street.

Q. It is a pretty important event in a woman's life, but you don't recollect the date exactly?

A. No. I have it at home in the Bible, but I do not recollect the date exactly; strange I am so stupid, too.

Q. Now, Mrs. Marshall, I think you say you did remember about a deed from James Marshall to Thomas Marshall.

A. Is that the deed you have there?

Q. A deed of that kind.

A. Yes, sir; I remember seeing the deed you have there.

Q. Do you remember a deed from James to Thomas Marshall?

A. Yes, sir; that was made before I was married.

Q. How long before you were married was that deed made?

A. Well, it was a short time; I cannot tell you, of course.

Q. A short time is rather indefinite; do you mean a few days?

A. I do not know.

Q. Do you know whether it was a few days or a few months?

A. No, sir; I cannot tell you anything about it unless I look at that deed and the date of my marriage.

Q. Have you no recollection, Mrs. Marshall?

A. No, sir.

Q. I thought you said it was the day previous to your marriage.

443 A. No, sir; I did not; I said that it was before I was married; I did not say how long.

Q. Now, this deed is dated the 21st of November, 1860?

A. Yes, sir.

Q. You say you were married on the 22nd of November?

A. Yes, sir.

Q. Isn't it likely that this was made the day before your marriage?

A. I cannot tell.

Q. So you cannot tell whether this was one or two years prior to your marriage?

A. No, sir; not until I look.

Q. You cannot tell how long prior to your marriage this deed was made?

A. No, sir.

Q. This deed was made in consideration of marriage and prior to it?

A. I don't know whether it was or not.

Q. Were you not informed the deed was made before you were married?

A. Mr. Marshall told me it was going to be.

Q. How long before your marriage was it he told you that?

A. I don't remember.

Q. Well, could you tell me—it was made of course after your engagement to Mr. Marshall?

A. Yes, I should think it must have been.

Q. How long did that engagement last before you were married?

444 A. I don't remember that.

Q. Well, could this deed have been made as many as three years prior to your marriage?

A. I don't remember; I will get the date though of my marriage, and then I can tell exactly.

Q. Yes, I wish you would; now, you say you do remember the signing of this paper?

A. I remember of signing a deed.

Q. Do you remember—this is your signature on this deed?

A. What deed is that (looking at deed)? That is my signature; yes.

Q. Now, I understood you [to] say——

The remainder of this question and answer was given orally by me in my testimony.

Q. You lived on Indiana avenue?

A. Yes, sir.

Q. Are you perfectly certain he said he wanted to renew a mortgage on Prairie avenue?

A. Yes, sir.

Q. And you say you did not know there was one on the Indiana property?

A. Yes, sir; I did not know there was or that there could be; I had always been told it could not have been done.

Q. And did you not know there was a prior one?

A. No, sir; I did not know of it.

Q. If there was you did not know of it?

A. No, sir.

Q. Had you ever seen any prior mortgage?

445 A. I have seen a prior mortgage, but if it was on that I did not know it.

Q. Your husband has been in the real estate property business a good many years, and in that way you have been called upon to sign a good many deeds?

A. Yes, sir.

Q. And you say you did not know there was a prior mortgage on that property?

A. Yes, sir.

Q. You didn't read them over?

A. Yes, sir; I did not read that at all.

Q. I suppose you had full trust in your husband. He would do what was right about it, and would not do anything but what was right?

A. Yes, sir.

Q. Now, about acknowledging. Have you always acknowledged all the deeds you have signed?

A. No, sir.

Q. Did not?

A. Some I did and some I did not.

Q. What class of deeds did you acknowledge, and what class of deeds did you not acknowledge?

A. I do not know; I could not say, because I do not know anything about it.

Q. You don't know what deeds you acknowledged and what deeds you did not?

A. No, sir.

Q. Could you tell what proportion of deeds you have signed you acknowledged and what you did not?

A. No, sir; I cannot.

446 Q. Can you tell anything of the number of deeds you have signed in the past 18 or 20 years you have been married?

A. No, sir; I have no idea.

Q. It probably went up into the hundreds?

A. I could not state. I know I have signed papers all my life—ever since I have been married—but I could not give it any number.

Q. Now, can you tell how many deeds in a day you signed?

A. No, sir.

Q. Or night?

A. No, sir.

Q. Have you any idea about it—can you give any idea?

A. No, sir; I could not give any idea about it.

Q. Now, when you acknowledged deeds, who has taken your acknowledgement?

A. A great many different men.

Q. Could you name any of them?

A. Well, Mr. Shortall has taken some, and I think—I don't remember now any of the rest of them personally. I happened to know him.

Q. You don't think you know any of the notaries?

A. No, sir.

Q. The only one you knew is Mr. Shortall?

A. Yes, sir.

Q. You say you happened to know him. How did you happen to know him?

A. I don't know, sir.

Q. Where were these taken?

447 A. I have been in Mr. Shortall's office before the fire, and also Mr. Marshall's office, but not after the fire, because I did not know where his office was; I am not certain of giving any deed; I think I did.

Q. Now, Mr. Marshall may—there may have been then, for anything you know, a mortgage or mortgages—one or more—one, two, three, or four—on this property prior to this?

A. I don't know anything about it.

Q. Well, there might have been, for anything you know to the contrary?

A. I don't know anything about it.

Q. You might have seen a mortgage to this property without knowing it, before signing this, might you not?

A. I don't know.
Q. You don't know?
A. No, sir.
Q. Well, you say you don't know what the deeds or mortgages you signed were?
A. I might have done it.
Q. Now, might it not be the case that you signed and acknowledged some mortgage to this property prior to this?
A. I don't know; I can't tell whether I did or not.
Q. So there may have been one or two mortgages on this property prior to this which you have acknowledged; that is the case, isn't it?
A. I cannot tell about that.
448 Q. I believe you said, Mrs. Marshall, your husband has been engaged in dealing in and buying real estate ever since you were married?
A. Yes, sir; and before.
Q. Now, this time you speak of, do you recollect of this physician, Dr. Reeds, calling there?
A. Yes, sir.
Q. You recollect the occasion of your illness at that time?
A. I do.
Q. And that morning you were suffering acute pain?
A. Yes, sir.
Q. And I take it from what you say that when your husband came in you did not pay any very close attention to what he said?
A. Yes, sir; I did; I knew what he said; I told you what he said before.
Q. You did pay close attention?
A. I told you as much as I knew.
Q. Are you sure you stated all that he said?
A. Yes, sir; I have told you all that I remember.
Q. You have told all that you remember?
A. Yes.
Q. Now had you known of any mortgage on the Prairie-avenue property till that time?
A. No, sir; I did not know anything about it.
Q. Do you know of any property that you and your brother owned on Prairie-avenue at that time?
449 A. Yes, sir; I know there was property in two or three different places.
Q. Did you know there was any mortgage on it at that time?
A. No, sir; I did not.

Redirect examination by Mr. PADDOCK:

Q. Mrs. Marshall, you speak of your eldest daughter; did you say when her 18th birthday occurred?
A. She was 18 years old the third of last October, and I was married 13 months when she was born.

Mr. WATERMAN: So that would run it back to 1860?
A. I think you are right; I guess it was that.

Mr. PADDOCK: Then you were married the 22nd of November, 1860?

A. Yes, sir; I was married on the 22nd of November; I guess 1860 is the year.

Mr. PADDOCK:

Q. Where is Mr. Marshall, your husband—James M.?

A. He is at home, sick in bed.

Q. Not able to attend here?

A. No; and we do not expect him to get well.

Mrs. Marshall then left the stand.

Mrs. MARSHALL recalled.

Examination by Mr. WATERMAN:

Q. Mrs. Marshall, I would like to have you look at that document.

A. Yes.

Q. *It* that your signature?

A. Yes.

450 Q. Do you recollect acknowledging that instrument?

A. No, sir.

Q. Well, what do you say as to whether you acknowledged it?

A. I don't know anything about it, only that is my signature; at least it looks like it; I suppose it is.

Q. Do you know what this instrument conveys?

A. No, sir; I do not.

Q. Let me see; it is, as I understand, a mortgage of $1,500.00 upon the premises 930 Indiana avenue, and the date of it is the first day of April, 1863.

A. Yes, sir.

Q. Now do you recollect about it?

A. No, sir; I do not.

Q. You don't remember whether you acknowledged it or not, but that is you- signature; do you recollect whether in 1863 there was a building being erected on these premises?

A. No, sir; there wasn't any.

Q. Wasn't there some improvements being put upon the premises at that time?

A. No, sir; it was long before that the premises were built, 20 years ago, or 18.

Q. About 18 years ago?

A. About 18 or 20; I don't know exactly.

Q. Now, wasn't there some addititions made to it 17 years ago, or 18?

A. There was some additions made, but they were made the year after; it was all done pretty much together.

451 Now, as I understand you, you say there were additions made about 18 years ago?

A. The kitchen was put up first; then about six months after it was all completed; it was all completed within a year or so.

Q. Then were not improvements being put there in 1863?
A. No, sir.
Q. Are you sure about that?
A. When was I married?
Mr. PADDOCK: 1860 you were married.
A. No, I don't think there was; of course I do not remember these dates; Mr. Marshall knows all these dates.
Q. Yes; the house was built after you were married?
A. Yes, sir.
Q. It was not built there that winter?
A. It was built there before I went there to live.
Q. Of course, before you went there to live.
A. It was built that year; I am not certain; I cannot tell you.
Q. It wasn't built in the winter following your marriage?
A. Yes, it was built in the winter or fall; I don't know whether——
Q. Then you can't state when these improvements were put upon it?
A. No, sir; I don't know.
Q. Now won't you look at the signature there; is that your signature?
A. Yes, sir.
452 Q. Can you—do you remember, Mr-. Marshall, whether you acknowledged that instrument?
A. No, sir; I do not know; I don't remember I ever signed it.
Q. You don't remember ever signing it?
A. I know that is my name there and the way I write it.
Q. Now this is dated the 13th day of February, 1867, and is an encumbrance, as I understand, for $5,000 on this property, 930 Indiana avenue; do you recollect anything about that?
A. No, sir.
Q. Don't even remember about signing it?
A. I don't remember anything about it.
Q. You don't remember the signing of either one?
A. No, sir.
Q. You know the signatures are yours in each case, but you don't remember anything about acknowledging them?
A. No, sir.

Mr. WATERMAN: Now, you- honor, we shall offer these two in evidence.
The COURT: They may be considered in evidence for what they are worth.
Mr. PADDOCK: We submit these do not throw any light upon the question. (To the witness:) As to these improvements, what did you say as to their being put on before 1872?
A. They were all put on before.
Q. How long before?
453 A. If I was married in 1860, I think in 1861 that the improvements were all made in that year.
Q. They were made at any rate a short time after your marriage?
A. Yes, sir; and I think the year following.

Q. Had you been living in this house several years at the date of this mortgage?

A. Yes, sir; I had been living there 16 or 17 years, I think.

This is all the testimony I find by Mrs. Marshall.

C. P. BROWN.

Endorsed: Filed May 3, '82. W. H. Bradley, cl'k.

454 EXHIBIT.

Deed of Thomas E. Marshall, bachelor, party of the first part, to Susan C. Marshall, wife of James M. Marshall, party of the second part. Deed dated the 25th day of May, 1861. Party of the first part, in consideration of one dollar, remises, releases, sells, conveys, and quit-claims unto the party of the second part, her heirs and assigns, forever, all right, title, interest, claim, and demand which the party of the first part has in and to the following-described blocks, pieces, and parcels of land, to wit: Lot 12 and the south 12 feet 3½ inches of lot 13, in block 3, in William Jones' addition to Chicago, the same being forty feet front on Indiana avenue and of the same width back to the alley in rear, all in the city of Chicago, Cook county, Illinois. This deed contains this recital: "This deed is made to correct a deed made by Thomas E. Marshall, Susan Marshall, and Ophelia K. Larmon, dated May 18, 1861, wherein said Thomas E. Marshall's name as trustee expressly was omitted. Now I, Thomas E. Marshall, do hereby release and convey unto said Susan C. Marshall all claims or rights of any kind conveyed to me by a certain deed of
455 trust dated November 21, 1860, from James M. Marshall to Thomas E. Marshall," being the same premises above described. Said trust deed was filed for record November 21, 1860, and recorded in book 206 at page 365.

"Now I, Thomas E. Marshall, do forever release, warrant, and convey to Susan C. Marshall all my right, title, estate, and privileges whatsoever that I may have had or to have in future, as trustee or trusteeship under said trust deed, to the above premises, and do convey the entire title of the said lots and improvements named in fee to Susan C. Marshall, her heirs and assigns, forever, and I lay no claim or authority to any of the real estate; to have and to hold the same, together with the appurtenances, estate, right, title, interest, and claim of the party of the first part in law and equity, to the use, benefit, and behoof of the party of the second part, her heirs and assigns, forever." Signed and sealed by Thomas E. Marshall. Witness James M. Marshall.

Said deed has appended a certificate of acknowledgement by Samuel Strauss that Thomas E. Marshall acknowledged the same before him on the 26th day of May, A. D. 1861, and has appended thereto the notarial seal of said Samuel Strauss. The said deed has also appended a certificate by the recorder of Cook county that said
456 instrument was duly recorded in his office on the 14th day of July, A. D. 1861.

Mortgage made November 1, 1860, by James M. Marshall,

party of the first part, to Carter H. Harrison, party of the second part, witnesseth:

That whereas the party of the first part is indebted to said Harrison in the principal sum of $3,800, secured by his note, payable sixty months after date, bearing interest at the rate of eight per cent. per annum, payable semi-annually, said interest secured by ten interest notes: Now, to secure said indebtedness — conveyed the said premises described in said deed of trust, dated February 13, 1872. Said deed contains a recital that the above-described notes are for the purchase-money of said premises, and contains a covenant that the said James M. Marshall shall keep the house to be erected on said premises insured in a good responsible insurance company for the sum of $1,500, and assign the policies to the party of the second part, his heirs and assigns; the said house to be erected on said above-named premises, and not to be removed until the above-named notes shall have all been paid. Signed and sealed by James. M. Marshall. Contains as certificate of acknowledgement by Philip A. Hoyne, the second day of November, 1860, and a certificate by the recorder of Cook county that said instrument was recorded in his office on the 17th day of November, 1860.

457 EXHIBIT.

Deed dated May 18, 1861, between Thomas E. Marshall, bachelor, Susan E. Marshall, and Ophelia K. Larmon, unmarried women, parties of the first part, and Susan C. Larmon, now Susan C. Marshall, wife of James M. Marshall, party of the second part, witnesses:

That whereas the said Thomas E. Marshall is now seized of the legal estate and inheritance in fee-simple of certain premises (being the premises conveyed by said deed of trust, dated February 13, 1872), subject to a certain mortgage executed by James M. Marshall to Carter H. Harrison to secure the payment of $3,800, with interest of five years from date, being the first day of November, 1860, and recorded in Cook county, Illinois, together with all the appurtenances, reversions, rents, issues, and profits thereof, which said premises were conveyed to said Thomas E. Marshall by a deed of conveyance dated the 21st day of November, 1860, by James M. Marshall, and recorded in Cook county, Illinois, in book 206 of deeds, page 365, in trust, nevertheless, that the said Thomas E. Marshall, subject to and for the separate use and support of the said Susan C. Larmon, now the wife of said James M. Marshall, in such manner and upon such conditions as all in said trust appointed during the term of her natural life, and in case of her death to her child or children, if any
458 surviving, by her intended marriage to James M. Marshall; and in case of the failure of such survivorship of such child or children at the time of the death of said Susan C. Larmon, now Susan C. Marshall, then in trust for the benefit of Susan E. Marshall, party of the first part, during her natural life; and in case of the death of said Susan E. Marshall during the lifetime of said Susan C. Larmon, now Susan C. Marshall, in trust for the benefit of the said Ophelia K. Larmon, party of the first part,

during her natural life; all of which said trusts are set forth in said deed, reference to which is here especially made: Now, therefore, in order to the final determination of the releasing and conveying of all such uses and trusts as are declared in and by said deed of trust, and to convey said premises fully and absolutely and discharge in full the uses aforesaid unto said Susan C. Larmon, now Susan C. Marshall, wife of James M. Marshall, the said parties of the first part severally and each for herself and himself hereby joining in the execution of this deed of conveyance for that purpose, and also in consideration of one dollar, do hereby grant, bargain, and sell, release, convey, and confirm unto the said party of the second part, her heirs [and] assigns, forever, the said premises;

459 to have and to hold the same, with all the appurtenances, reversions, rents, issues, and profits, and all uses, trusts, or estates whatever declared or *in*sisting thereunder by virtue of any trust deed or deeds in favor of or to the use, present or contingent, of all or any one of said parties of the first part, by virtue of existing deed or deeds of trust aforesaid, they hereby expressly relinquished and release the same, and all right, title, interest, claim or claims, and demands whatsoever, as well in law as in equity, of said parties of the first part in and to said premises unto said party of the second part and unto her heirs and assigns, whatever and separate from her said husband's claims to the same as if she, said Susan C. Marshall, were *femme sole*, the said parties of the first part hereby intend to invest the whole equitable estate in her, the said party of the second part, and to her heirs and assigns forever. Signed and sealed by Thomas E. Marshall, Susan E. Marshall, and Ophelia K. Larmon.

Witnessed by James M. Marshall.

Acknowledged by the three parties of the first part before Phillip A. Hoyne, notary public.

Certificate of acknowledgement and notarial seal of Phillip A. Hoyne.

Attached also certificate of the recorder of Cook county that said deed was recorded in his office the 21st day of May, 1861.

460 EXHIBIT.

This indenture, made this first day of November, in the year of our Lord one thousand eight hundred and sixty, between Joseph N. Barker and Frances M., his wife, of the city of Chicago, county of Cook, and State of Illinois, party*s* of the first part, and James M. Marshall, of the same place, party of the second part, witnesseth:

That the said party*s* of the first part, for and in consideration of the sum of five thousand ($5,000) dollars in hand paid by the said party of the second part (the receipt whereof is hereby acknowledged and the said part- of the second part forever released and discharged therefrom), have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part, and to his heirs and assigns, forever all the

following-described lots, pieces, or parcels of land situate in the county of Cook and State of Illinois and known and described as follows, to [wit]: Lots twelve (12) and thirteen (13), in block three (3), of William Jones' addition to Chicago, being the same property conveyed to Joseph N. Barker by Carter H. Harrison Dec. 1,
461 1858; together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party*s* of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

And the said Joseph N. Barker, party of the first part, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever; and the
462 above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party*s* of the first part shall and will warrant and forever defend.

In witness whereof the said party*s* of the first part hereunto set their hands and seals the day and year first above written.

JOSEPH N. BARKER. [SEAL.]
FRANCES M. BARKER. [SEAL.]

Signed, sealed, and delivered in presence of—

——— ———.

STATE OF ILLINOIS, }
Cook County, City of Chicago, } *ss:*

I, L. Proudfoot, Jr., a notary public in and for said city of Chicago, in the county and State aforesaid, do hereby certify that Joseph N. Barker & Frances M., his wife, personally known to me as the same persons whose names are subscribed to the within instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth. And the said Frances M. Barker, wife of the said Joseph N. Barker, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and
463 meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely

and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this 17th day of November, A. D. 1860.

[NOTARIAL SEAL.] L. PROUDFOOT, JR.,
Notary Public.

No. 39674.

STATE OF ILLINOIS, *Cook County:*

This instrument was filed for record on the seventeenth day of November, A. D. 1860, and duly recorded in book 206 of deeds at page 319.

WM. L. CHURCH,
Clerk of Circuit Court and Ex-officio Recorder.

(Endorsed:) Filed May 3, 1882. W. H. Bradley, clerk.

464 EXHIBIT.

This indenture, made this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty (A. D. 1860), between James M. Marshall (bachelor), of the city of Chicago, county of Cook, and State of Illinois, party of the first part, and Thomas E. Marshall, of the same place, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and for the purpose of conveying and assuring the premises hereinafter described, and granted unto such uses and upon such trusts as are hereinafter mentioned and declared, of, and concerning the same, hath granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents doth grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, his heirs and assigns, forever, all those certain lots, pieces, or parcels of land situate in the city of Chicago, in the county of Cook and State of Illinois, and known and described as follows, to wit: Lot twelve (12) and the south twelve feet three and one-half inches (12
465 ft. 3½ in) of lot thirteen (13), in block number three (3), in William Jones' addition to Chicago, being forty (40) feet front on Indiana avenue, in said city of Chicago, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the right, title, and interest, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above bargained and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever, in trust, nevertheless, for and upon the several uses, intents, and purposes hereinafter mentioned—that is to say, upon trust that he, the said party of the second part,

his heirs and assigns, shall and will, from time to time, let and demise the said premises, and recover and receive the rents and income thereof, and pay over the same as and when received unto the hands of Susan C. Larmon, of said city of Chicago,
466 or to such other person or persons as she, in writing, under her hand, from time to time, may authorize, appoint, and empower to receive the same, or, at her option, to permit and suffer her, the said Susan C. Larmon, to occupy and enjoy the same or to let and demise the said premises or any part thereof, and to take and receive the rents and income thereof during all the time of her natural life, for her own separate use and support, and so that the same shall not be in the power or liable to the debts, control, or engagements of any future husband of the said Susan C. Larmon, she paying all taxes and assessments thereon and all proper and necessary repairs thereof, and upon the receipt of such rents and income to make, execute, and deliver in her own name any and all necessary and proper receipts and acquittances therefor, and the receipts and acquittances so given by her or the receipts of such person or persons as she may, in writing, authorize, appoint, and empower to receive the same as aforesaid, notwithstanding any coverture or whether she shall be covert or sole, shall be deemed and held to be good and valid discharges in law for all purposes whatsoever;
467 and in case the said Susan C. Larmon shall, at her decease, leave surviving her any child or children of her, the said Susan C. Larmon, by her intended marriage to the said party of the first part, then the said party of the second part to hold the said premises in trust to and for the only proper use and benefit of such child or children until he, she, or they and each of them shall have attained to the age of twenty-one (21) years, or until the survivor or survivors of such children shall have attained to the age of twenty-one (21) years; then by a good and sufficient deed of conveyance to convey the said premises to such child or children and the issue of such child or children as may then be deceased, as tenants in common, in such manner that such issue of such deceased child or children, if any, shall take equally among them such parts or shares of said premises as his, her, or their parent or parents would have taken if alive; and in case the said Susan C. Larmon shall not at her decease leave surviving her any child or children by her said intended marriage, or the issue of a deceased child or children, then the said party of the second part to hold the said premises in trust for the
468 uses and benefit of Susan E. Marshall, of Chicago, aforesaid, for and during the full term of her natural life, in case she shall survive the said Susan C. Larmon; and in case the said Susan C. Larmon shall depart this life without issue by her intended marriage, and the said Susan E. Marshall shall not survive the said Susan C. Larmon, then the said party of the second part shall hold the said premises in trust for the sole use and benefit of Ophelia K. Larmon, of Chicago aforesaid, for and during the full term of her natural life.

In case the said Ophelia K. Larmon shall survive the said Susan C. Larmon and the said Susan E. Marshall, and in case of and upon

the decease of the said Susan C. Larmon without issue by her said intended marriage and of the said Susan E. Marshall and Ophelia K. Larmon, then and immediately thereafter the said party of the second part shall reconvey the said premises to the said party of the first part, his heirs or assigns.

And the said party of the first part, for himself and for his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part that at the time of the ensealing and delivery of these presents he is well
469 seized of the premises above conveyed and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all incumbrances of what kind or nature soever except a certain mortgage executed by the said party of the first part to Carter H. Harrison to secure the payment of thirty-eight hundred dollars ($3,800) and interest in five years from the date thereof, bearing date the first day of November, A. D. 1860, and recorded in the recorder's office of Cook county aforesaid; and the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, except as against the said mortgage, the said party of the first part shall and will warrant and forever defend.

And the said Thomas E. Marshall, the said party of the second part, on his part accepting the trusts aforesaid, doth, for himself, his heirs, executors, administrators, and assigns, covenant, grant, bargain, and agree to and with the said James M. Marshall and to and with all and every person and persons before named interested or to be interested as aforesaid, and each of them, their and each of their representatives, as the case may require, faith-
470 fully to perform and fulfill the trusts aforesaid and every part thereof, according to the true intent and meaning of these presents.

In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

JAMES M. MARSHALL. [SEAL.]
THOMAS E. MARSHALL. [SEAL.]

Witness:
HIRAM L. LEWIS.

STATE OF ILLINOIS, } ss:
Cook County, }

I, John A. Bross, a notary public in and for said county, in the State aforesaid, do hereby certify that James M. Marshall and Thomas E. Marshall, who are personally known to me to be the same persons whose names are subscribed to the annexed deed of trust, appeared before me this day in person, and acknowledged that they had signed, sealed, and delivered the said instrument of writing as their free act and deed for the uses and purposes therein expressed.

Given under my hand and notarial seal this twenty-first day of November, A. D. 1860.

[SEAL.] JOHN A. BROSS,
Notary Public.

39818.

STATE OF ILLINOIS, *Cook County:*

Filed for record 21st November, 1860. Recorded book 206, deeds, page 365.

WM. L. CHURCH, *Clk.*

Re-recorded April 5, 1877, at 1 o'clock p. m. No. 128,858.
JAS. W. BROCKWAY, *Recorder.*

471 James M. Marshall, real estate broker, Apr. 28, 1873, Chicago.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the fifth day of April, A. D. 1877, as document No. 128,858, and recorded in book 719 of records, at page 22.

In testimony whereof I have hereunto set my hand and affixed my official seal at Chicago this twenty-eighth day of April, A. D. 1879.

[Seal Recorder of Deeds, Cook County, Illinois.]

JAS. W. BROCKWAY, *Recorder.*

(Endorsed:) Filed May 3, 1882. W. H. Bradley, clerk.

472 EXHIBIT.

[United States Revenue Stamp, 50 cents, Cancelled.]

Know all men by these presents that Carter H. Harrison and Sophonisba G. Harrison, his wife, of the county of Cook and State of Illinois, for and in consideration of one dollar and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quit-claim unto Susan C. Marshall, of Cook county, in the State of Illinois, all the right, title, interest, claim, or demand whatsoever they may have acquired in, through, or by a certain mortgage deed bearing date the first (1st) day November, A. D. 1860, and recorded in the recorder's office of Cook county, Illinois, in book fifty-seven of mortgages, page seventy-five, to the premises therein described. as follows, to wit: So much of lots twelve and thirteen, in block three, of William Jones' addition to the city of Chicago as is bounded as follows: Beginning at the southeast corner of said lot twelve (12); thence
473 running north, along the east line of said lots twelve (12) and thirteen (13), forty feet to a point; thence west, along a line parallel with the south line of said lot thirteen (13), to the west line of said lot thirteen (13); thence south, along said line, forty feet to the southwest corner of said lot twelve (12); thence east to the place of begining, together with all the appurtenances and privileges thereunto belonging or appertaining.

Witness their hands and seals this thirteenth day of January, A. D. 1883.

CARTER H. HARRISON. [SEAL.]
SOPHONISBA G. HARRISON. [SEAL.]

Witness:
O. F. BADGER.

STATE OF ILLINOIS, } ss:
Cook County, City of Chicago, }

I, Joseph N. Barker, a notary public in and for the city of Chicago, in the county and State aforesaid, do hereby certify that Carter H. Harrison and Sophonisba G. Harrison, his wife, personally known to be the same persons whose names are subscribed to the annexed instrument of writing, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth. And the said Sophonisba G. Harrison,
474 wife of the said Carter H. Harrison, having been examined separate and apart and out of the hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, & interest in and to the lands and tenements, therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this sixteenth day of January, A. D. 1863.

[NOTARIAL SEAL.] JOSEPH N. BARKER,
Notary Public.

No. 65139.

STATE OF ILLINOIS, *County of Cook:*

This instrument was filed for record on the eleventh day of April, A. D. 1863, and duly recorded in book 259 of deeds, page 179.

WM. L. CHURCH, *Clk.*

(Endorsed:) Filed May 3, 1882. W. H. Bradley, clerk.

475 EXHIBIT.

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and sixty-three (A. D. 1863), between James M. Marshall and Susan C. Marshall, his wife, both of the city of Chicago, in the county of Cook and State of Illinois, parties of the first part, and Nathan B. Ives, of the city and county of New Haven and State of Connecticut, party of the second part, —: Whereas the said James M. Marshall is justly indebted unto the said party of the second part in the sum of fifteen hundred dollars, lawful money of the United States of America, an actual loan of money this day made by said party of the second part to the said James M. Marshall, at Chicago aforesaid, in conformity to and under and to be construed by the laws of the State of Illinois, secured to be

paid by the certain bond or obligation of the said James M. Marshall, bearing even date herewith, in the penal sum of three thousand dollars, conditioned for the payment unto the above-named party of the second part, his executors, administrators, or assigns, of the sum of fifteen hundred dollars, on the first day of April, which
476 will be in the year of our Lord one thousand eight hundred and sixty-six, with interest for the — to be computed from the day of the date thereof, at and after the rate of eight per centum per annum, which said interest shall be paid half yearly, to wit, on the first day of each of the months of October and April, which will be in each and every year until the said principal sum shall be fully paid; and the said payments, both of principal and interest, shall be made at such place in the city of New Haven, in the State of Connecticut, as the said Nathan B. Ives, his executors, administrators, or assigns, may, from time to time in writing, appoint, and in default of such appointment then to his or their credit at the City Bank of New Haven, in said city of New Haven, with a proviso thereunder written whereby it is expressly agreed and fully understood that if default be made in the payment of any of the interest on the principal sum above mentioned, payable half yearly, as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to the above condition, then and in that case the principal sum above mentioned, together with all arrearages
477 of interest thereon, shall, at the option of the said Nathan B. Ives, his executors, administrators, or assigns, thereupon become due and payable, and may be demanded and collected immediately thereafter as if the full time for which this loan is made had fully expired, anything thereinbefore expressed to the contrary notwithstanding, as by the said bond and the condition thereof, and the proviso thereunder written, reference being thereto had, may more fully appear.

Now, therefore, this indenture witnesseth: That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of said bond, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever all those certain lots, pieces, or parcels of land situate, lying, and being in the city of Chicago aforesaid, and known and described as follows, to wit: Lots
478 numbered twelve (12) and thirteen (13), in block numbered three, (3) of William Jones' addition to the city of Chicago, Cook county, Illinois, excepting therefrom so much of lot thirteen as is described as follows, to wit: Beginning at the northeast corner of said lot thirteen (13); thence running west along the north line of said lot thirteen to the northwest corner of said lot thirteen; thence south along the west line of said lot thirteen fifteen and five-twelfths

(15 5/12) feet; thence east, on a line parallel with the north line of said lot thirteen, to the east line of said lot thirteen; thence north along said east line of said lot thirteen fifteen and five-twelfths (15 5/12) feet to the place of beginning, the said tract hereby conveyed, or intended so to be, being a strip of land forty (40) feet in width, north and south, and running from the west line of Indiana avenue west one hundred and fifty-eight (158) feet, more or less, to an alley in fractional section twenty-two (22), township thirty-nine (39) north and range fourteen (14) east, 3d P. M., together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, re-
479 mainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever: Provided always, and these presents are upon this express — nevertheless, That if the said party of the first part, their heirs, executors, or administrators, shall and do well and truly pay or cause to be paid unto the said party of the second part, his executors, administrators, or assigns, the said principal sum of money mentioned in the condition of said bond and the interest thereon at the time and times respectively and in the manner mentioned in the condition of said bond, according to the true intent and meaning thereof, and shall and do promptly and faithfully fulfill and perform all the covenants and agreements hereinafter mentioned, that then and from thenceforth these presents and the estate hereby granted shall cease, determine, and be
480 utterly null and void, anything hereinbefore contained to the contrary notwithstanding.

And the said James M. Marshall, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the second part, his executors, administrators, and assigns, that he will well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the said principal sum of money mentioned in the condition of said bond, and the interest thereon according to the said condition, and also that he will not at any time hereafter, until the said principal sum and the interest thereon shall be fully paid, suffer said premises, or any portion thereof, to be sold for any tax or assessment whatsoever, nor will he do nor permit to be done to, in, upon, or about said premises anything that may in any wise tend to impair the value thereof, or to weaken, diminish, or impair the security intended to be effected under and by virtue of this instrument; and, further, that he, his heirs, executors, and administrators, shall and will at all times hereafter, until said principal sum of money and all arrearages of interest thereon shall be fully paid, keep all the buildings (outhouses excepted) now situate or that may here-
481 after be erected upon said premises fully insured against loss

or damage by fire or other casualty in some good and responsible insurance company or companies (the selection of such insurance company or companies to be left at the option of the said party of the second part, his heirs or assigns, or his or their authorized agent), in the fair insurable value of such buildings, and will legally and properly assign to the said party of the second part, his executors, administrators, or assigns, and deliver to him or them, or his or their authorized agent, each, all, and every the policies of insurance therefor as soon as and whenever such insurance shall be effected, and will also deliver to said party of the second part, his executors, administrators, or assigns, or to his or their authorized agent, all premium or renewal certificates received for the payment of the premium upon such policy or policies of insurance as soon as and whenever such certificates shall be issued, and in default of so doing the said party of the second part, his executors, administrators, or assigns, at his or their option, may effect insurance in his or their name or names, or otherwise; and the premium money
482 paid therefor shall be a charge upon said premises, and shall be secured by this instrument in the same manner as the said principal sum of money above mentioned is secured, and such premium money shall be paid by said James M. Marshall, his heirs, and legal representatives, to said party of the second part, his executors, administrators, or assigns, on demand, and may be collected at any and all times, after the same shall have been paid with interest thereon, at the rate of ten per centum per annum, from the time the same shall be advanced, and the said party of the second part, his executors, administrators, or assigns, shall hold each and all such policies of insurance so received, by assignment or otherwise, as collateral and additional security for said principal sum of money and interest, and shall have the right to collect and receive any and all money and sums of money that may at any time become collectable or receivable upon each, all, and every of such policies of insurance, and apply the same when received in the same manner, as far as possible, as is hereinafter provided for in case of a sale of said above-described premises under the power of sale hereinafter
483 contained; but nothing herein contained shall be construed as requiring the said part- of the second part, his executors, administrators, or assigns, to incur any expense or make any effort to collect any money that may become due on any of such policies of insurance; but if he or they shall elect not to collect the same they shall make such election within a reasonable time after such money shall became collectable, and on demand of said James M. Marshall or his legal representatives shall thereupon forthwith, after making such election not to collect, reassign and deliver such policy or policies of insurance to said James M. Marshall, his executors, administrators, or assigns; but it is hereby expressly agreed and understood by and between the parties to these presents that if default shall be made in the payment of the said principal sum of money above mentioned, or of the interest that may grow due thereon or any part thereof, at the time and times respectively when the same ought to be paid, as set forth in the said condition of said bond, or if the said James

M. Marshall, his heirs, executors, or administrator, shall at any time hereafter until said principal sum and all arrearages of
484 interest thereon shall be fully paid, suffer said premises or any part thereof to be sold for any tax or assessment whatsoever, or shall do or permit to be done to, in, upon, or about said premises or any part thereof anything that may in any wise tend to diminish the value thereof or to impair, weaken, or diminish the security to be effected under and by virtue of this instrument, or shall neglect or fail to keep all the buildings (except outhouses) that now are or hereafter may be situate upon said premises fully insured, and the policies of insurance therefor assigned to said party of the second part, his executors, administrators, or assigns, and deliver to him or them, or his or their authorized agent, together with all premium or renewal certificates received from time to time for the payment of the premium upon such policies, as hereinbefore covenanted and provided, or shall fail in any wise promptly and faithfully to fulfill, keep, and perform, as well in spirit as in letter, all and singular the covenants and agreements contained in these presents; or if either or any of said covenants and agreements shall at any time be broken in any respect whatsoever, that then and from thenceforth it
485 shall be lawful for the said party of the second part, his executors, administrators, or assigns, either in person or by attorney, to enter into and upon all and singular the said premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, their heirs or assigns, therein, at public auction, having first given twenty days' notice of the time and place of such sale (such sale to be made at Chicago aforesaid) by advertisement in any one of the daily newspapers that may at that time be published in the English language, in the said city of Chicago, personal notice of such sale to said party of the first part, their heirs, executors, administrators, or assigns, or any and all persons claiming by, through, or under them, being hereby expressly waived and excused, and either in the name of the said party of the second part, his heirs or assigns, or at his or their option, as the attorney of the said party of the first part, for that purpose by these presents duly and irrevocably authorized, constituted, and appointed to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the
486 same, in fee-simple; and all the recitals that may be contained in such deed or deeds setting forth the fact of due notice, advertisement, and sale, and any and all such other facts and statements as may be proper to evidence the legality of such sale and conveyance, and that the same had been duly made in all respects, so as to meet all the requirements herein contained or arising in law, and as may be necessary to convey a good title, shall be deemed to be true, and shall be considered and taken as *prima facie* evidence of all the facts and matters set forth in such recitals; and such deed or deeds, whether made in the name of the said party of the first part or in the name or names of the said party of the second

One dollar U. S. int. rev. stamp, cancel'd.

part, his heirs or assigns, shall be effectual to pass the title; and out of the money arising from such sale to pay and retain—

First. All the costs, charges, and expenses of such advertisement, sale, and conveyance.

Second. All premium money paid for any insurance, as hereinbefore provided, and all money and sums of money which said party of the second part, his legal representatives or assigns, may,
487 at any time before such sale, pay or expend to redeem said above-described premises from any sale or sales for taxes or assessments or to save the same from such sale or to protect the title or possession of said premises or any part thereof, with interest on all money so advanced or expended at the rate of ten per centum per annum from the time of so paying or expending the same up to the time of such sale.

Third. All of said principal, money, and accrued interest thereon that shall, at the time of such sale, remain unpaid whether due or not due, and

Fourth. Rendering the overplus of the purchase-money, if any there be, unto the said James M. Marshall, his executors, administrators, or assigns, which sale so to be made shall be a perpetual bar both in law and equity against the said party of the first part, their heirs and assigns, and all other persons claiming or to claim the premises or any part thereof by, from, or under them or any of them, and the said party of the first part, for the consideration above mentioned, doth hereby expressly waive and release all right and benefit which they have in and to said premises or to
488 which they may be entitled under and by virtue of an act entitled "An act to exempt homesteads from sale on execution," approved February 11th, A. D. 1851, and also an act entitled "An act to amend an act to exempt homesteads from sale on execution," approved February 17th, A. D. 1857, as well as any and all other acts of a like character or for a similar purpose; and the said James M. Marshall and Susan C. Marshall, for themselves, their heirs, executors, and administrators, doth covenant, bargain, and agree to and with the said party of the second part, his executors, administrators, and assigns, that they are well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid, and that the same are free from all other and former grants, mortgages, liens, incumbrances, and tax sales of any and every name, kind, nature, or description whatsoever, and against all and every person or persons lawfully claiming or to claim the whole or any part thereof will warrant and forever defend.

In testimony whereof the said parties of the first part have
489 hereunto set their hands and seals at Chicago, aforesaid, the day and year first above written.

Paid.

JAMES M. MARSHALL. [SEAL.]
SUSAN C. MARSHALL. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, City of Chicago, }

I, John G. Shortall, a notary public in and for the said city of Chicago, in said county, in the State aforesaid, do hereby certify that James M. Marshall and Susan C. Marshall, his wife, who are personally known to me to be the person whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument in writing as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said instrument, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws so called.

And the said Susan C. Marshall, wife of the said James M. Marshall, *wife of the said James M. Marshall*, having been by me examined separate and apart and out of the hearing of her
490 husband, and the contents and meaning of the said instrument, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished all right, title, and interest to the lands and tenements therein mentioned, and all her rights under each and all of the homestead exemption laws, so called, as mentioned in the foregoing instrument, having been by me made known and distinctly explained to her, expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all of said homestead exemption laws without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this 10th day of April, A. D. 1863.

[NOTARIAL SEAL.] JOHN G. SHORTALL,
Notary Public.

Filed for record in the recorder's office of Cook Co., Illinois, on the eleventh day of April, A. D. 1863, and duly recorded in book 67 of mt'gs, page 298.

WM. L. CHURCH, *Cl'k.*

(Endorsed:) Filed May 3d, 1882. W. H. Bradley, clerk.

491 EXHIBIT.

Know all men by these presents that I, James M. Marshall, of the city of Chicago, in the county of Cook and State of Illinois, am held and firmly bound unto Nathan B. Ives, of the city and county of New Haven, in the State of Connecticut, in the penal sum of three thousand dollars, lawful money of the United States of America, to be paid unto the said Nathan B. Ives, his executors, administrators, or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated at Chicago aforesaid this first day

of April, in the year of our Lord one thousand eight hundred and sixty-three.

The condition of this — is -at if the above-bounden James M. Marshall, his -eirs, -ecutors, or administrators, shall and do well and truly pay or cause to be paid unto the above-named Nathan B. Ives, his executors, administrators, or assigns, the sum of fifteen hundred dollars on the first day of April, which will be in the year of our Lord one thousand eight hundred and sixty-six, with interest
492 for the same, to be computed *be computed* from the day of the date hereof at and after the rate of eight per centum per annum, which said interest shall be paid half yearly, to wit, on the first day of each of the months of October and April, which will be in each and every year until the said principal sum shall be fully paid; and the said payments, both of principal and interest, shall be made at such place in the city of New Haven, in the State of Connecticut, as the said Nathan B. Ives, his executors, administrators, or assigns, may from time to time in writing appoint, and in default of such appointment then to his or their credit at the City Bank of New Haven, in said city of New Haven, then and in such case this bond to [be] void; otherwise to remain in full force and virtue: Provided, nevertheless, and it is hereby expressly agreed and fully understood, That if default be made in the payment of any of the interest on the principal sum above mentioned, payable half yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall have become due and payable according to the above condition, then and in
493 that case the principal sum above mentioned, together with all arrearages of interest thereon, shall, at the option of the said Nathan B. Ives, his executors, administrators, or assigns, thereupon become due and payable and may be demanded and collected immediately thereafter as if the full time for which this loan is made had fully expired, anything hereinbefore contained to the contrary notwithstanding.

It is hereby expressly declared that this bond or obligation is made under and is in all respects to be construed by the laws of the State of Illinois, and is given for an actual loan of money made at Chicago aforesaid by the said Nathan B. Ives to the said James M. Marshall on the day of the date hereof, and due bills or interest coupons for each payment of interest are given herewith.

Paid. JAMES MARSHALL. [SEAL.]

[Inter. rev. stamp, 10 cents, canc'l'd.]

No. 6. $60.00

Due Nathan B. Ives, or order, sixty dollars on the first day of April, A. D. 1866, without grace, payable at such place in the city of New Haven, in the State of Connecticut, as he or his legal representatives or assigns may in writing appoint, and in default of such appointment then to his or their credit at the City Bank
494 of New Haven, in said city of New Haven, being the payment of the half yearly interest due that day on my bond to

said Nathan B. Ives, of this date, conditioned for the payment of fifteen hundred dollars on the first day of April, A. D. 1866.

Chicago April 1st, 1863.

JAMES M. MARSHALL.

(Endorsed:) " Pay to the order of Baird & Bradley. M. B. Ives.

Whereas I, James M. Marshall, of the city of Chicago, in the County of Cook and State of Illinois, am justly indebted unto Nathan B. Ives, of the city and county of New Haven, in the State of Connecticut, in the sum of fifteen hundred dollars, an actual loan of money made to me in Chicago aforesaid, and secured to be paid by my bond, bearing even date herewith, payable in the penal sum of three thousand dollars, but conditioned in effect for the payment of the sum of fifteen hundred dollars on the first day of April, in the year of our Lord one thousand eight hundred and sixty six, with interest for the same at the rate of eight per centum per annum, payable half yearly, both principal and interest, payable at such place in the city of New *York*, in the State of
495 Connecticut, as the said Nathan B. Ives, his executors, administrators, or assigns, may from time to time in writing appoint, and in default of such appointment then to his or their credit at the City Bank of New Haven, in said city of New Haven, with a proviso thereunder written that if default be made in the payment of the interest, payable half yearly, as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to said condition, then and in that case the principal sum aforesaid, with all arrearages of interest thereon, shall, at the option of the said Nathan
U. S. rev. stamp, 10 cents, canc'l'd. B. Ives, his executors, administrators, or assigns, thereupon become due and payable, and may be demanded and collected immediately thereafter, as if the full time for which this loan is made had fully expired, anything thereinbefore expressed to the contrary notwithstanding.

Now, therefore, know all men by these presents that I, the said James M Marshall, for the further purpose of securing the prompt and punctual payment of said bond or obligation, with the prompt and punctual payment of the interest, payable half yearly, as aforesaid, at the time and times and at the places respectively
496 mentioned in said bond, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Mark Skinner, or any other attorney of any court of record in the United States of America, to be my true and lawful attorney, irrevocable, for me and in my name, place, and stead to appear in any court of record in term time or vacation, in any of the States, Territories, or districts of the United States, at any time after default shall have been made in the payment of the principal, or either or any part of the payments of interests to be made half yearly, as aforesaid, according to the true intent and meaning of said condition of said bond, and the proviso thereto to waive service of process, accept a declaration, and confess a judgment in favor of the said Nathan B. Ives, his executors, admin-

istrators, or assigns, upon said bond for so much of principal and interest as shall at the time of the entry of such judgment be and remain unpaid upon said bond due or not due, according to the true intent and meaning of the condition of said bond, and the proviso thereto, together with all costs, charges, and twenty-five dollars in addition thereto as an attorney's fee, and for such purpose to file a cognovit for such
497 amounts with an agreement therein that execution may issue forthwith, and that no writ of error or appeal shall be prosecuted upon such judgment nor any bill in equity filed or any other proceeding had to interfere in any manner with the operation of such judgment, nor any motion made to quash, set aside, or stay any execution that may be issued thereon; and, further, the said attorney is hereby empowered, at his option, in case of default being made or suffered in the payment of any of the interest coupons or promissory notes when due and payable, to waive service of process and confess a judgment in favor of said Nathan B. Ives, his executors, administrators, or assigns, upon such of the coupons given with said bond for the payment of the interest thereon as shall at such time be due by the terms thereof and then remaining unpaid for so much money as may then be due thereon according to the tenor thereof, together with all costs and charges and ten dollars in addition for each of such coupons as an attorney's fee; and for the purpose of confessing any such judgment or judgments upon any of the coupons given with said bond, as above provided, a copy
498 of this power of attorney may be filed in the office of the clerk of any court of record, and when so filed and certified to by such clerk shall be deemed and taken as sufficient for all the purposes contemplated by these original presents, and shall have the same force and effect as would this warrant of attorney if so filed as aforesaid, the said filing whereof being hereby expressly waived, and to release all errors that may intervene in the entering up of all or any of said judgments, or issuing execution or executions thereon, or in any of the proceedings had thereunder, hereby ratifying and confirming all that my said attorney may legally do under and by virtue hereof.

Witness my hand and seal at Chicago aforesaid this first day of April, A. D. 1863.

Paid.

JAMES M. MARSHALL. [SEAL.]

(Endorsed:) Filed May 3, 1882. W. H. Bradley, clerk.

499 EXHIBIT.

This indenture, made this fourteenth day of March, in the year of our Lord one thousand eight hundred and sixty-two (1862), between Joseph N. Barker and Frances M., his wife, of the city of Chicago, county of Cook, and State of Illinois, party of the first part, and Susan C. Marshall (wife of James M. Marshall), of the city of Chicago, county of Cook, and State of Illinois, party of the second part, witnesseth: That the said partys of the first part, for and in consideration of the sum of five thousand ($5,000) dollars in hand

paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said partys of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part, and to her heirs and assigns forever, all the following-described lots, pieces, or parcels of lands situate in the county of Cook and State of Illinois, and known and described as follows, to wit: Lots number twelve (12) and
500 thirteen (13), in block number three (3) of William Jones' addition to Chicago. This deed is made to correct the acknowledgement of a certain deed of same lots from Joseph N. Baker & wife to James M. Marshall, of date Nov. 1st, 1860, and recorded Nov. 17, 1860, in book 206, page 319, of deeds, in Cook county, State of Illinois, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaing, and the reverson and reversons, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part her heirs and assigns, forever; and the said Joseph N. Barker and Frances M. Barker, his wife, partys of the first part, for themselves and their heirs, executors, and administrators, *does* covenant, grant, bargain, and agree to and with the said party of the second part, her heirs and assigns, that at the time of the
501 ensealing and delivering of these presents they are well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof, the said partys of the first part shall and will warrant and forever defend.

In witness whereof the said partys of the first part hereunto set their hands and seals the day and year first above written.

JOSEPH N. BARKER. [SEAL.]
FRANCES M. BARKER. [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.

STATE OF ILLINOIS, } ss:
Cook County, City of Chicago, }

I, Benjamin W. Thomas, a notary public in and for the said
502 city of Chicago, in said county, in the State aforesaid, do here-

by certify that Joseph N. Barker and Frances M. Barker, his wife, who are personally known to me to be the same persons whose names are subscribed to the within deed as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws so called. And the said Frances M. Barker, wife of the said Joseph N. Barker, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called, without the compulsion of her
503 said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this eighteenth day of March, A. D. 1862.

[NOTARIAL SEAL.] BENJAMIN W. THOMAS,
Notary Public.

No. 119,311.

STATE OF ILLINOIS, *Cook County:*

This instrument was filed for record on the fourteenth day of July, A. D. 1866, at the hour of — o'clock — m., and duly recorded in book 351 of deeds at page 202.

WM. L. CHURCH,
Clerk of [*the*] *Circuit Court and Ex-officio Recorder.*

(Endorsed:) Filed May 3, 1882. W. H. Bradley, clerk.

504 EXHIBIT.

This indenture, made this thirteenth day of February, in the year of our Lord one thousand eight hundred and sixty-seven (1867), between Susan C. Marshall, wife of James M. Marshall, and James M. Marshall, her husband, both of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Lyman Baird, of the said city of Chicago, county and State aforesaid, party of the second part: Whereas the said James M. Marshall is justly indebted unto Francis Bradley, of the said city of Chicago, in the sum of five thousand dollars, lawful money of the United States of America, an actual loan of money this day made by said Francis Brad-
(Paid.) ley to said James M. Marshall at Chicago aforesaid, in conformity to and under and to be construed by the laws of the State of Illinois, secured to be paid by the certain bond or obligation of the said James M. Marshall, bearing even date herewith,

in the penal sum of ten thousand dollars, conditioned for the payment unto the above-named Francis Bradley, his executors, administrators, or assigns, of the sum of five thousand dollars on the thirteenth day of February, which will be in the year of our Lord one thousand eight hundred and seventy-two (1872), with interest
505 for the same, to be computed from the day of the date thereof at and after the rate of nine per centum per annum, which said interest shall be paid half yearly, to wit, on the thirteenth day of each of the months of August and February, which will be in each and every year until the said principal sum shall be fully paid, and which payments, both of principal and interest, shall be made at such place in the city of New York, in the State of New
(Paid.) York, as the said Francis Bradley, his executors, administrators, or assigns, may from time to time in writing appoint, and in default of such appointment then to his or their credit at the Bank of America, in the said city of New York, with a proviso thereunder written whereby it is expressly agreed and fully understood that if default be made in the payment of any of the interest on the principal sum above mentioned, payable half yearly, as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to the above condition, then and in that case the principal sum above mentioned, together with all arrearages of interest thereon, shall, at the option of the said Francis Bradley, his executors, administrators, or assigns, thereupon become due
506 and payable, and may be demanded and collected immediately thereafter, anything thereinbefore expressed to the contrary notwithstanding.

Now, therefore, this indenture witnesseth: That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of said bond, with interest thereon according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid by the said party of the second party, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed, and *conveyed and* confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part and his heirs, successors in trust, and assigns, forever, all the certain lots, pieces, or parcels of land situate, lying, and being in the city of Chicago, county of Cook, in the State of Illinois, known and described as follows, to wit: Lots numbered twelve (12) and thirteen (13), in block number three (3), in William Jones' addition to Chicago, Cook county, aforesaid, excepting and reserving therefrom a strip fifteen and five-twelfths ($15\frac{5}{12}$) feet in width
507 from off the north side of said lot thirteen (13), the premises hereby intended to be conveyed being forty (40) — wide, north and south, and running from the east line of said lots twelve (12) and thirteen (13) west one hundred — fifty-eight (158) feet, more or less, to an alley; said lots are in fractional section twenty- — (22), township thirty-nine (39) north, range fourteen (14) east of third principal meridian, together with all and singular the tenements,

hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs, successors in trust, and assigns, forever; in trust, nevertheless, that if default shall be made in the payment of the said principal sum of money above mentioned, or of the interest that may grow due thereon, or
508 any part thereof, at the time and times respectively when the same ought to be paid, as set forth in the said condition of said bond, or if the said James M. Marshall, his heirs, executors, or administrators, shall at any time hereafter until said principal sum — all arrearages of interest thereon shall be fully paid suffer said premises, or any part thereof, to be sold for any tax or assessment whatsoever, or shall do, or permit to be done to, in, upon, or about said premises, or any part thereof, anything that may in any wise tend to diminish the value thereof or to impair, weaken, or diminish the security intended to be effected under and by virtue of this instrument, or shall neglect or fail to keep all the buildings (except outhouses) that now or hereafter may be situate upon said premises insured and the policies of insurance therefor assigned to said party of the second part or his successors in trust, and delivered to him or them as hereinafter covenanted and provided, or shall fail in any wise promptly and faithfully to fulfill, keep, and perform all and singular the covenants and agreements contained in these presents, that then and from thenceforth it shall be lawful for the said party of the second part or his successors in trust, on application of the legal holder of said bond with or without a previous entry upon said premises, to sell and dispose of said premises hereby
509 granted, or intended so to be, and all right, title, benefit, and equity of redemption of the said party of the first part, their heirs or assigns therein, at public auction, having first given twenty days' notice of the time and place of such sale (such sale to be made at the north door of the court-house in the city of Chicago, in the county of Cook and State of Illinois) by advertisement in any one of the daily newspapers that may at that time be published in the English language in said city of Chicago, personal notice of such sale to said party of the first part, their heirs, executors, administrators, or assigns, or any and all persons claiming by, through, or under them, being hereby expressly waived and excused, and in the name of the said party of the second part or his successors in trust to make, execute, and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of conveyance for the premises sold in the law for the same in fee-simple, and all the recitals that may be contained in such deed or deeds, setting forth the fact of due notice, advertisement of sale, and any and all such other facts and statements as may be proper to evidence the legality of such sale and

conveyance, and that the same has been duly made in all respects so as to meet all the requirements herein contained or arising
510 in law and as may be necessary to convey a good title shall be deemed to be true, and shall be considered and taken as *prima-facie* evidence of all the facts and matters set forth in such recitals, and such deed or deeds shall be effectual to pass the title, and out of the money arising from such sale to pay and retain—

First. All the costs, charges, and expenses of such advertisement, sale, and conveyance, including commissions such as are allowed by law to sheriffs on sale of real estate on execution.

Second. All premium money paid for any insurance as hereinafter provided, and all money and sums of money which said party of the second part or his successors in trust may at any time before such sale pay or expend to redeem said above-described premises from any sale or sales for taxes or assessments, or to save the same from such sale or to protect the title or possession of said premises, or any part thereof, with interest on all money so advanced or expended at the rate of ten per centum per annum from the time of so paying or expending the same up to the time of such sale.

Third. All of said principal money and accrued interest thereon that shall at the time of such sale remain unpaid, whether due or not due; and

511 Fourth. Rendering the overplus of the purchase-money, if any there be, unto the said Susan C. Marshall, her executors, administrators, or assigns, on reasonable request. And it shall not be obligatory upon the purchaser or purchasers at such sale to see to the application of the purchase-money, which sale or sales so made shall be a perpetual bar both in law and equity against the said party of the first part, their heirs and assigns, and all other persons claiming or to claim the said premises, or any part thereof, by, from, or under them, or any of them. And the said party of the first part, for the purpose of enabling said party of the second part to make any advantageous and judicious sale of said premises, do hereby authorize and empower him to adjourn said sale from time to time on request of the legal holder of said bond at the discretion of said party of the second part, and also to sell said premises entire without division or in parcels, as said party of the second part may elect. And the said party of the first part, for the consideration above mentioned and in order to create a first lien and incumbrance on said premises under this deed for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, do hereby expressly waive and release all right and benefit which they have or to which
512 they may be entitled in and to said premises, or the proceeds of sale thereof, under and by virtue of an act entitled "An act to exempt homesteads from sale on execution," approved February 11th, A. D. 1851, and also an act entitled "An act to amend an act to exempt homesteads from sale on execution," approved February 17th, A. D. 1857, as well as any and all other acts of like character or for a similar purpose, and agree to surrender up possession of

said premises to the purchaser or purchasers at such sale peaceably on demand.

And the said James M. Marshall, for himself, his heirs, executors, and administrators, doth covenant, bargain, and agree to and with the said party of the second part, his successors in trust and assigns, that the said Susan C. Marshall is well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple, and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid, and that the same are free from all other and former grants, mortgages, liens, incumbrances, and tax sales of any and every name, kind, nature, or description
513 whatsoever, and against all and ever person or persons lawfully claiming or to claim the whole or any part thereof will warrant and forever defend. And the said James M. Marshall, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the second part and his successors in trust that he will not at any time hereafter, until the said principal sum and the interest thereon shall be fully paid, suffer said premises or any part thereof to be sold for any tax or assessment whatsoever, nor will he do nor permit to be done to, in, upon, or about said premises anything that may in any wise tend to impair the value thereof or to weaken, diminish, or impair the security intended to be effected under and by virtue of this instrument; and, further, that he, his heirs, executors, and administrators shall and will at all times hereafter, until said principal sum of money and all arrearages of interest thereon shall be fully paid, keep all the buildings (outhouses excepted) now situate or that may hereatter be erected upon said premises fully insured against loss or damage by fire in some good and responsible insurance company or companies (the selection of such insurance company or companies to be left at the option of the said party of the second
514 part or his successors in trust) in the fair insurable value of such buildings, not, however, exceeding the sum of five thousand dollars, except at the option of said party of the first part, and will legally and properly assign to the said party of the second part or his successors in trust and deliver to him or them each, all, and every the policies of insurance therefor as soon as and whenever such insurance shall be effected. And in default of so doing the said party of the second part, or his successors in trust, at his or their option, may effect such insurance in his or their own name or names or otherwise, and the premium money paid therefor shall be a charge upon said premises and shall be secured by this instrument in the same manner as the said principal sum of money above mentioned is secured, and such premium money shall be paid by said James M. Marshall, his heirs and legal representatives, to said party of the second part or his successors in trust on demand and may be collected at any and all times after the same shall have been paid, with interest thereon at the rate of ten per centum per annum from the time the same shall be advanced. And the said party of the second part or his successors in trust shall

hold each and all such policies of insurance so received by assignment or otherwise as collateral and additional security for said principal sum of money and interest, and shall have the right to collect and receive any and all money and sums of money that may at any time become collectable or receivable upon each, all, and every of such policies of insurance and apply the same when received in the same manner, as far as possible, as is hereinbefore provided for in case of a sale of said above-described premises under the power of sale hereinbefore contained. But nothing herein contained shall be construed as requiring the said party of the second part or his successors in trust to incur any expense or make any effort to collect any money that may become due on any of such policies of insurance, but if — or they shall elect not to collect the same, or they shall make such election within a reasonable time after such money shall become collectable and on demand of said James M. Marshall or his legal representatives, — shall thereupon forthwith, after making such election not to collect, reassign and deliver such policy or policies of insurance to said James M. Marshall, his executors, administrators, or assigns; a reconveyance of said premises to be made to said party of the first part, their heirs or assigns, at their expense on full payment of the indebtedness aforesaid and performance of the covenants and agreements made herein by the party of the first part. And in case of the death, absence, inability, or refusal to act of said party of the second part, then William H. Bradley, of the said city of Chicago, shall be, and he hereby is, appointed and made successor in trust to said party of the second part under this deed of trust with like powers and authority, and said premises shall thereupon become vested in said succession in trust for the uses and purposes aforesaid. And in case of the death, absence, inability, or refusal to act of said party of the second part and the said William H. Bradley, then Lewis H. Boutell, of the said city of Chicago (now residing in Evanston), shall be, and he hereby is, appointed and made successor in trust to said above-named parties under this deed with like power and authority, and said premises shall thereupon become vested in said successor in trust for the uses and purposes aforesaid.

[U. S. rev. stamp, 50 cents, cancel'd.]

In witness whereof the said partys of the first part have hereunto set their hands and seals at Chicago the day and year first above written.

SUSAN C. MARSHALL. [SEAL.]
(Paid.) JAMES M. MARSHALL. [SEAL.]

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

I, John G. Shortall, a notary public in and for the said city, in county and State aforesaid, do hereby certify that James M. Marshall and Susan C. Marshall, personally known to me as the real persons whose names are subscribed to the foregoing instrument, as having executed the same, appeared before me this day in person, and severally

acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said instrument, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead laws, so called.

And the said Susan C. Marshall, wife of the said James M. Marshall, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument and her rights under the homestead laws of the
518 State of Illinois having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this fifteenth day of February, A. D. 1867.

[NOTARIAL SEAL.] JOHN G. SHORTALL,
Notary Public.

131,917.

Filed for record in the recorder's office of Cook Co., Ill., on the eighteenth day of February, A. D. 1867, and duly recorded in book 380 of deeds, page 41.

WM. L. CHURCH.

(Endorsed:) Filed May 3, 1882. W. H. Bradley, clerk.

519 EXHIBIT.

[On margin:] The trust deed made to secure this bond is duly stamped.

Know all men by these presents that I, James M. Marshall, of the city of Chicago, in the county of Cook and State of Illinois, am held and firmly bound unto Francis Bradley, of the said city of Chicago, county and State aforesaid, in the penal sum of ten thousand dollars, lawful money of the United States of America, to be paid unto the said Francis Bradley, his executors, administrators, or assigns, for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated at Chicago aforesaid this thirteenth day of February, in the year of our Lord one thousand eight hun- and sixty-seven. The condition of this oblication is such that if the above-bounden James M. Marshall, his heirs, executors, or administrators, shall and do well and truly pay or cause to be paid unto the above-named Francis Bradley, his executors, administrators, or assigns, the sum of five thousand dollars on the thirteenth day of February, which will be in the year of our Lord one thou-

520 sand eight hundred and seventy-two, with interest for the same, to be computed from the day of the date hereof at and after the rate of nine per centum per annum, which said interest shall be paid half-yearly, to wit, on the thirteenth day of each of the months of August and February, which will be in each and every year until the said principal sum shall be fully paid, and the said payments, both of principal and interest, shall be made at such place in the city of New York, in the State of New York, as the said Francis Bradley, his executors, administrators, or assigns, may, from time to time, in writing appoint, and in default of such payment then to his or their credit at the Bank of America, in the said city of New York, then and in such case this bond to be void; otherwise to remain in full force and virtue.

Provided, nevertheless, and it is hereby expressly agreed and understood, That if default be made in the payment of any of the interest on the principal sum above mentioned, payable half-yearly, as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to the above condition, then and in that 521 case the principal sum above mentioned, together with all arrearages of interest thereon, shall, at the option of the said Francis Bradley, his executors or assigns, thereupon become due and payable, and may be demanded and collected immediately thereafter, anything hereinbefore contained to the contrary notwithstanding. It is hereby expressly declared that this bond or obligation is made under and in all respects to be construed by the laws of the State of Illinois, and is given for an actual loan of money made at Chicago aforesaid by the said Francis Branley to the said James M. Marshall on the day of the date hereof. Due bills or interest coupons for each payment of interest are given herewith.

(Paid.) JAMES M. MARSHALL. [SEAL.]

[U. S. rev. stamp, 5 cents, canc'l'd.]

Pay James W. Paxton or order without recourse.

(Paid.) FRANCIS BRADLEY.

Pay Baird & Bradley or order.

(Paid.) J. W. PAXTON.

[Internal revenue stamps, U. S., 15 cents, cancel'd.]

$225.

Due Francis Bradley or order two hundred and twenty-five dollars on the thirteenth day of February, A. D. 1872, without grace, payable at such place in the city of New York, in the State of 522 New York, as he, his legal representatives or assigns, may in writing appoint, and in default of such appointment then at the Bank of America, in said city of New York, being for the payment of the half-yearly interest due that day on my bond to said Francis Bradley of this date, conditioned for the payment [of] five thousand dollars on the thirteenth day of February, A. D. 1872.

Chicago, February 13th, 1867.

(Paid.) JAMES M. MARSHALL.

Pay James W. Paxton or order without recourse.

FRANCIS BRADLEY.

Pay Baird & Bradley or order.

J. W. PAXTON.

Whereas I, James M. Marshall, of the city of Chicago, in the county of Cook and State of Illinois, am justly indebted unto Francis Bradley, of the city of Chicago, county and State aforesaid, in the sum of five thousand dollars, an actual loan of money made to me at Chicago aforesaid, and secured to be paid by my bond, bearing even date herewith, in the penal sum of ten thousand dollars, but conditioned in effect for the payment of the sum of five thousand dollars on the thirteenth day of February, in the year of our Lord one thou-
523 sand eight hundred and seventy-two, with interest for the same at the rate of nine per centum per annum, payable half yearly, (paid) both principal and interest payable at such place in the city of New York, in the State of New York, as the said Francis Bradley, his executors, administrators, or assigns, may from time to time in writing appoint; and, in default of such appointment, then to his or their credit at the Bank of America, in the said city of New York, with a proviso, thereunder written, that if default be made in the payment of the interest, payable half yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to said condition, then and in that case the principal sum aforesaid, with all arrearages of interest thereon, shall, at the option of the said Francis Bradley, his executors, administrators, or assigns, thereupon become due and payable, and may be demanded and collected immediately thereafter, anything thereinbefore expressed to the contrary notwithstanding.

Now, therefore, know all men by these presents that I, the said James M. Marshall (paid), for the purpose of securing the prompt and punctual payment of said bond or obligation, with the
524 prompt and punctual payment of the interest, payable half yearly as aforesaid, at the time and times and at the places respectively mentioned in said bond, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Norman C. Perkins, or any other attorney of any court of record in the United States of America, to be my true and lawful attorney, irrevocable, for me and in my name, place, and stead to appear in any court of record, in term time or vacation, in any of the States, Territories, or districts of the United States, at any time after default shall have been made in the payment of the principal or either or any part of the payments of interest, to be made half yearly as aforesaid, according to the true intent and meaning of said condition of said bond and the proviso thereto, to waive service of process, accept a declaration, and confess a judgment in favor of the said Francis Bradley, his executors, administrators, or assigns, upon said bond for so much of principal and interest as shall at the time of the entry of such judgment be and remain upaid upon said bond,

due or not due, according to the true intent and meaning of the
525 condition of said bond and the proviso thereto, together with all costs, charges, and a reasonable sum in addition thereto as an attorney's fee, and for such purpose to file a *cognovit* for such amounts, with an agreement therein that execution may issue forthwith, and that no writ of error or appeal shall be prosecuted upon such judgment, nor any bill in equity filed or any other proceeding had to interfere in any manner with the operation of such judgment, nor any motion made to quash, set aside, or stay any execution that may be issued thereon.

And, further, the said attorney is hereby empowered at his option, in case of default being made or suffered in the payment of any of the interest coupons or promissory notes when due and payable, to waive service of process and confess a judgment in favor of said Francis Bradley, his executors, administrators, or assigns, upon such of the coupons given with said bond for the payment of the interest thereon as shall at such time be due by the terms thereof and then remaining unpaid for so much money as may then be due thereon, according to the tenor thereof, together with all costs and charges and ten dollars in addition for each of such coupons as an attorney's fee.

And for the purpose of confessing any such judgment or judgments upon any of the coupons given with said bond, as above pro-
526 vided, a copy of this power of attorney may be filed in the office of the clerk of any court of record, and when so filed and certified to such clerk shall be deemed and taken as sufficient for all the purposes contemplated by these original presents, and shall have the same force and effect as would this original warrant of attorney if so filed as aforesaid, the said filing whereof being hereby expressly waived, and to release all errors that may intervene in the entering up of all or any of said judgments or issuing execution or executions thereon or in any of the proceedings had thereunder, hereby ratifying and confirming all that my said attorney may legally do under and (paid) by virtue hereof.

Witness my hand and seal at Chicago aforesaid this thirteenth day of February, A. D. 1867.

JAMES M. MARSHALL. [SEAL.]

[U. S. internal revenue stamp, 50 cents, canc'l'd.]

(Endorsed:) Filed May 3, 1882. W. H. Bradley, clerk.

527 EXHIBIT.

Bond. Jas. M. Marshall to Francis Bradley.

Know all men by these presents that I, James M. Marshall, of the city of Chicago, county of Cook, and State of Illinois, am held and firmly bound unto Francis Bradley, of said Chicago, in the penal sum of twenty thousand dollars, lawful money of the United States of America, to be paid unto the said Francis Bradley, his executors, administrators, or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated at Chicago, in the State of Illinois, this thirteenth day of February, in the year of our Lord one thousand eight hundred and seventy-two.

The condition of this obligation is such that if the above-bounden James M. Marshall, his heirs, executors, or administrators, shall and do well and truly pay or cause to be paid unto the said Francis Bradley, his executors, administrators, or assigns, the sum of ten thousand dollars on the thirteenth day of February, which will be in the year of our Lord one thousand eight hundred and seventy-seven, with interest for the same, to be computed from the day of the date hereof at and after the rate of nine per centum per annum, which interest shall be paid half yearly, to wit, on
528 the thirteenth day of each of the months of February and August, which will be in each and every year until the said principal sum shall be fully paid, which said interest payments, until the said principal sum shall become due, are specified in and further secured by ten coupons, given herewith, and the said payments, both of principal and interest, shall be made at such place in the city of New York, in the State of New York, as the said Francis Bradley, his executors, administrators, or assigns, may from time to time in writing appoint, and in default of such appointment then at the Bank of America, in said city of New York, then and in such case this bond to be void; otherwise to remain in full force and virtue:

Provided, nevertheless, and it is hereby expressly agreed and fully understood, That if default be made in the payment of any of the interest on the principal sum above mentioned, payable half yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to the above condition, then and in that case the principal sum above mentioned, together with all the arrearages of interest thereon, shall, at the option of the said Francis Bradley, his executors, administrators, or assigns, thereupon become due and
529 payable, and shall be collectable without notice, immediately, or at any time after any such default, anything hereinbefore contained to the contrary notwithstanding.

It is hereby expressly declared that this bond or obligation is made under and is in all respects to be construed by the laws of the State of Illinois, and is given for an actual loan of money made at the said city of Chicago by the said Francis Bradley to the said James M. Marshall on the day of the date hereof.

JAMES M. MARSHALL. [SEAL.]

(Endorsed on back:) For value received I hereby sell, assign, and transfer all my right, title, and interest in and to the within bond to James W. Paxton, his heirs and assigns, without recourse. Francis Bradley. [Seal.]

No. 10. $450.00.

Due Francis Bradley, or order, four hundred and fifty dollars, on the thirteenth day of February, A. D. 1877, without grace, payable

at such place in the city of New York, in the State of New York, as he, his executors, administrators, or assigns, may, in writing, appoint, and in default of such appointment then at the Bank of America, in said city of New York, being for the payment of the half-yearly interest due that day on my bond to said Francis Bradley of this date, conditioned for the payment of ten thousand dollars on the thirteenth day of February, A. D. 1877.

Chicago, February 13th, 1872.

[Twent-five cent int. rev. stamp, U. S.]

JAMES M. MARSHALL.

(Endorsed on back:) Pay James W. Paxton, or order, without recourse. Francis Bradley.

530 Whereas I, James M. Marshall, of the city of Chicago, county of Cook, and State of Illinois, am justly indebted unto Francis Bradley, of said Chicago, in the sum of ten thousand dollars, an actual loan of money made to me at Chicago, and secured to be paid by my bond, bearing even date herewith, in the penal sum of twenty thousand dollars, but conditioned in effect for the payment of the sum of ten thousand dollars on the thirteenth day of February, in the year of our Lord one thousand eight hundred and seventy-seven, with interest for the same at the rate of nine per centum per annum, payable half yearly, both principal and interest payable at such place in the city of New York, in the State of New York, as the said Francis Bradley, his executors, administrators, or assigns, may from time to time, in writing, appoint, and in default of such appointment then at the Bank of America, in said city of New York, with a proviso thereunder written that if default be made in the payment of the interest, payable half yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to said condition, then and in that case the principal
531 sum aforesaid, with all arrearages of interest thereon, shall, at the option of said Francis Bradley, his executors, administrators, or assigns, thereupon become due and payable and shall be collectable, without notice, immediately, or at any time after any such default, anything therein expressed to the contrary notwithstanding.

Now, therefore, know all men by these presents that I, the said James M. Marshall, for the purpose of securing the prompt and punctual payment of the said principal sum of money and the interest thereon, according to the true intent and meaning of the said bond, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Norman C. Perkins, or any other attorney of any court of record in the United States of America, to be my true and lawful attorney, irrevocable, for me and in my name, place, and stead to appear in any court of record, in term time or vacation, in any of the States, Territories, or districts of the United States, at any time after default shall have been made in the payment of the said principal sum or of either of said half-yearly in-

stallments of interest, or any part thereof, according to the
532 true intent and meaning of said condition of said bond and the proviso thereto, to waive service of process, accept a declaration, and confess a judgment in favor of the said Francis Bradley, his executors, administrators, or assigns, upon said bond for so much of principal and interest as shall at the time of the entry of such judgment be and remain unpaid upon said bond, due or not due, according to the true intent and meaning of the condition of said bond and the proviso thereto, together with all costs, charges, and a reasonable sum in addition thereto as an attorney's fee, and for such purpose to file a *cognovit* for such amounts, with an agreement therein that execution may issue forthwith, and that no writ of appeal shall be prosecuted upon such judgment nor any bill in equity filed or any other proceedings had to interfere in any manner with the operation of such judgment, nor any motion made to quash, set aside, or stay any execution that may be issued thereon; and further the said attorney is hereby empowered, at his option, in case of default being made or suffered in the payment of any of
533 the interest coupons when due and payable, to waive service of process and confess a judgment in favor of said Francis Bradley, his executors, administrators, or assigns, upon such of the coupons given with said bond for the payment of the interest thereon as shall at such time be due by the terms thereof, and then remaining unpaid, for so much money as may then be due thereon, according to the tenor thereof, together with all costs and charges and a reasonable sum in addition for each of such coupons as an attorney's fee, hereby ratifying and confirming all that my said attorney may legally do under and by virtue hereof.

Witness my hand and seal at Chicago aforesaid this thirteenth day of ——, A. D. 1872.

JAMES M. MARSHALL.

[Fifty cents inter. revenue U. S. stamp.]

(Endorsed:) Bond. James M. Marshall to Francis Bradley. $10,000. Dated February 13th, 1872, due February 13th, 1877. Interest at nine per cent. per annum, payable half-yearly, to wit: $450.00, Feb'y 13th, $450.00, Aug. 13th in each year. Both principal and interest payable at Bank of America, N. Y., or at such other place as the lender may appoint. Filed May 3, 1882. Wm. H. Bradley, clerk.

534 EXHIBIT.

Deed of Trust from S. C. & J. M. Marshall to Lyman Baird.

CHICAGO, *March 6th*, 1872.

The accompanying instrument, executed by Susan C. Marshall and James M. Marshall, has this day been compared with the record thereof in the recorder's office of Cook county, Illinois, in book 56 of records at page 48, and the record there made found correct in every particular.

BAIRD & BRADLEY.

This indenture, made this thirteenth day of February, in the year of our Lord one thousand eight hundred and seventy-two, between Susan C. Marshall, wife of James M. Marshall, and James M. Marshall, her husband, both of the city of Chicago, county of Cook, and State of Illinois, party of the first part, and Lyman Baird, of said Chicago, party of the second part: Whereas the said James M. Marshall is justly indebted unto Francis Bradley, of said Chicago, in the sum of ten thousand dollars, secured to be paid by the certain bond of said James M. Marshall, bearing even date here-
535 with, in the penal sum of twenty thousand dollars, conditioned for the payment unto the said Francis Bradley, his executors, administrators, or assigns, the sum of ten thousand dollars on the thirteenth day of February, in the year of our Lord one thousand eight hundred [and] seventy-seven, with interest thereon from the day of the date of the said bond at the rate of nine per centum per annum, to be paid half-yearly, to wit, on the thirteenth day of each of the months of February and August in each and every year, until the said principal sum shall be fully paid, which said interest payments, until the said principal sum shall become due, are specified in and further secured by ten coupons given herewith, and the said payments, both principal and interest, are to be made at such place in the city of New York, in the State of New York, as the said Francis Bradley, his executors, administrators, or assigns, may from time to time in writing appoint, and in default of such appointment then at the Bank of America, in said city of New York, under which bond there is a proviso written, whereby it is agreed that if
536 default be made in the payment of any of the interest on the said principal sum, payable half-yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable according to the condition of the said bond as aforesaid, then and in that case the principal sum above mentioned, with all arrearages of interest thereon, shall, at the option of the said Francis Bradley, his executors, administrators, or assigns, at once become due and payabe, and shall be collectable without notice immediately, or at any time after such default, anything thereinbefore contained to the contrary notwithstanding.

Now, therefore, this indenture witnesseth: That the said party of the first part, for the better securing the payment of the said principal sum of money, with interest thereon, according to the true intent and meaning of the said bond, and also in consideration of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, ha- granted, bargained, sold, aliened, released, conveyed, and confirmed, and by *and by* these presents do grant, bargain, sell, alien, release,
537 convey, and confirm, unto the said party of the second part, his successors in trust and assigns, forever, all the certain lot, piece, or parcel of land situate, lying, and being in the city of Chicago, county of Cook, and State of Illinois, and known and described as follows, to wit: Beginning at the southeast corner of lot numbered twelve (12), in block numbered three (3), in William Jones'

addition to Chicago, and running thence north along the west line of Indiana avenue forty (40) feet; thence west parallel with the north line of said lot twelve (12), which said north line coincides with the south line of lot thirteen (13), in said block three (3), one hundred and fifty-eight (158) feet to an alley; thence south along the east line of said alley forty (40) feet to the south line of said lot twelve (12); thence east along said last-mentioned line one hundred and fifty-eight (158) feet to the place of beginning; otherwise described as all of said lot twelve (12) and the south twelve feet and three and a half inches (12.3½ feet) of said lot thirteen (13), according to the plat recorded in the recorder's office in said
538 Cook county, in book 133 of maps, page 37; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above-granted, bargained *bargained*, and described premises, with the appurtenances, unto the said party of the second part, his successors in trust, and assigns, forever; in trust nevertheless that if default shall be made in the payment of the said principal sum of money, or the interest that may accrue thereon, or any part thereof, when the same become due and payable, either by election of the legal holder of the said bond under the provisions of the said bond or of this instrument or by the maturity of the said bond, or if the said James M. Mar-
539 shall, his heirs, executors, or administrators, shall at any time, until said principal sum and all arrearages of interest thereon shall be fully paid, suffer said premises, or any part thereof, to be sold for any tax or assessment whatsoever, or shall do or permit to be done to, in, upon, or about said premises anything that may in any wise tend to diminish the value thereof, or to impair, weaken, or diminish the security intended to be effected under and by virtue of this instrument, or shall neglect to keep all buildings upon said premises insured, and the policies of insurance delivered to said party of the second part, or his successors in trust, as hereinafter provided, or shall fail in any wise to fully keep and perform all and singular the covenants and agreements hereinafter contained, that then and from thenceforth it shall be lawful for the said party of the second part, or his successors in trust, on application of the legal holder of said bond, with or without a previous entry upon said premises, to sell and dispose of the premises hereby granted or intended so to be, and all right, title, benefit, and
540 equity of redemption of the said party of the first part, their heirs or assigns therein, at public auction, at the north door of the court-house, in the said city of Chicago, to the highest bidder for cash, having first given twenty days' notice of the time and place of such sale by advertisement in any one of the daily newspapers that may then be published in the said city of Chicago in

the English language, personal notice of such sale to said party of the first part, their heirs, executors, administrators, or assigns, or any and all persons claiming by, through, or under them, being hereby expressly waived and excused, and in the name or names of the said party of the second part, or his successors in trust, to make, execute, and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of conveyance for the premises sold, in the law for the same in fee simple; and out of the money arising from such sale to pay and retain—

First. All charges and expenses made or sustained on account of this trust, including the expenses of such advertisement, sale,
541 and conveyance, commissions on such sale, and all moneys that the said party of the second part, or his successors in trust, may have advanced for insurance, taxes, and redemption from tax sales on the said premises, or to protect his or their title thereto in any manner whatever, with interest on such advances at ten per centum per annum.

Second. All of said principal sum of money and accrued interest thereon that may, at the time of such sale, remain unpaid, whether due or not due.

Third. Rendering the overplus, if any there be, unto the said Susan C. Marshall, her executors, administrators, or assigns, upon reasonable request.

And the said party of the second part, or his successors in trust, may adjourn such sale from time to time, and for such time as he or they may judge best, and may also, at such sale, sell the said premises entire without division, or in parcels, in his or their discretion, and it shall not be obligatory upon the purchaser or purchasers at such sale to see to the application of the purchase-money;
542 which sale so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all persons claiming or to claim the said premises or any part thereof by, from, through, or under them, or any of them; and the said party of the first part agree to surrender possession of the said premises to the purchaser or purchasers at such sale peaceably on demand.

And if the said party of the second part, or his successors in trust, shall at any time advance money for insurance on the said premises, or to pay taxes thereon, or to redeem from tax sales of the same, or to protect his or their title thereto in any manner whatever, such advances shall be a charge upon the said premises, and may be collected with interest thereon in the manner hereinbefore provided.

And the said party of the first part, for the consideration above mentioned and in order to create a first lien and incumbrance on said premises under this deed, for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of
543 any sale that may be made by virtue hereof, do hereby expressly waive and release all right and benefit which they have in and to said premises or to which they may be entitled in said premises or the proceeds of sale thereof under and by virtue of an act entitled "An act to exempt homesteads from sale on execu-

addition to Chicago, and running thence north along the west line of Indiana avenue forty (40) feet; thence west parallel with the north line of said lot twelve (12), which said north line coincides with the south line of lot thirteen (13), in said block three (3), one hundred and fifty-eight (158) feet to an alley; thence south along the east line of said alley forty (40) feet to the south line of said lot twelve (12); thence east along said last-mentioned line one hundred and fifty-eight (158) feet to the place of beginning; otherwise described as all of said lot twelve (12) and the south twelve feet and three and a half inches (12.3½ feet) of said lot thirteen (13), according to the plat recorded in the recorder's office in said
538 Cook county, in book 133 of maps, page 37; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above-granted, bargained *bargained*, and described premises, with the appurtenances, unto the said party of the second part, his successors in trust, and assigns, forever; in trust nevertheless that if default shall be made in the payment of the said principal sum of money, or the interest that may accrue thereon, or any part thereof, when the same become due and payable, either by election of the legal holder of the said bond under the provisions of the said bond or of this instrument or by the maturity of the said bond, or if the said James M. Mar-
539 shall, his heirs, executors, or administrators, shall at any time, until said principal sum and all arrearages of interest thereon shall be fully paid, suffer said premises, or any part thereof, to be sold for any tax or assessment whatsoever, or shall do or permit to be done to, in, upon, or about said premises anything that may in any wise tend to diminish the value thereof, or to impair, weaken, or diminish the security intended to be effected under and by virtue of this instrument, or shall neglect to keep all buildings upon said premises insured, and the policies of insurance delivered to said party of the second part, or his successors in trust, as hereinafter provided, or shall fail in any wise to fully keep and perform all and singular the covenants and agreements hereinafter contained, that then and from thenceforth it shall be lawful for the said party of the second part, or his successors in trust, on application of the legal holder of said bond, with or without a previous entry upon said premises, to sell and dispose of the premises hereby granted or intended so to be, and all right, title, benefit, and
540 equity of redemption of the said party of the first part, their heirs or assigns therein, at public auction, at the north door of the court-house, in the said city of Chicago, to the highest bidder for cash, having first given twenty days' notice of the time and place of such sale by advertisement in any one of the daily newspapers that may then be published in the said city of Chicago in

the English language, personal notice of such sale to said party of the first part, their heirs, executors, administrators, or assigns, or any and all persons claiming by, through, or under them, being hereby expressly waived and excused, and in the name or names of the said party of the second part, or his successors in trust, to make, execute, and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of conveyance for the premises sold, in the law for the same in fee simple; and out of the money arising from such sale to pay and retain—

First. All charges and expenses made or sustained on account of this trust, including the expenses of such advertisement, sale,
541 and conveyance, commissions on such sale, and all moneys that the said party of the second part, or his successors in trust, may have advanced for insurance, taxes, and redemption from tax sales on the said premises, or to protect his or their title thereto in any manner whatever, with interest on such advances at ten per centum per annum.

Second. All of said principal sum of money and accrued interest thereon that may, at the time of such sale, remain unpaid, whether due or not due.

Third. Rendering the overplus, if any there be, unto the said Susan C. Marshall, her executors, administrators, or assigns, upon reasonable request.

And the said party of the second part, or his successors in trust, may adjourn such sale from time to time, and for such time as he or they may judge best, and may also, at such sale, sell the said premises entire without division, or in parcels, in his or their discretion, and it shall not be obligatory upon the purchaser or purchasers at such sale to see to the application of the purchase-money;
542 which sale so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all persons claiming or to claim the said premises or any part thereof by, from, through, or under them, or any of them; and the said party of the first part agree to surrender possession of the said premises to the purchaser or purchasers at such sale peaceably on demand.

And if the said party of the second part, or his successors in trust, shall at any time advance money for insurance on the said premises, or to pay taxes thereon, or to redeem from tax sales of the same, or to protect his or their title thereto in any manner whatever, such advances shall be a charge upon the said premises, and may be collected with interest thereon in the manner hereinbefore provided.

And the said party of the first part, for the consideration above mentioned and in order to create a first lien and incumbrance on said premises under this deed, for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of
543 any sale that may be made by virtue hereof, do hereby expressly waive and release all right and benefit which they have in and to said premises or to which they may be entitled in said premises or the proceeds of sale thereof under and by virtue of an act entitled "An act to exempt homesteads from sale on execu-

tion," passed by the General Assembly of the State of Illinois, and approved February 11th, A. D. 1851, and also an act entitled "An act to amend an act to exempt homesteads from sale on execution," passed by said Assembly, and approved February 17th, A. D. 1857, as well as any and all other acts of a like character or for a similar purpose.

And the said James M. Marshall, for himself, his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his successors in trust and assigns, that at the time of the ensealing and delivering of these presents the said Susan C. Marshall is well seized of the premises above conveyed as of a good, sure, perfe-t, absolute, and inde-
544 feasible state of inheritance in law in fee-simple and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever, and the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, his successors in trust and assigns, against all and every other person and persons lawfully claiming or to claim the whole or any part thereof, the said James M. Marshall will warrant and forever defend.

And that until the said principal sum of money and all arrearages of interest thereon shall be fully paid he will pay or cause to be paid all taxes and assessments on said premises when the same become and payable, and that he will not do or permit to be done to, in, upon, or about the said premises anything that may in any wise tend to deminish the value thereof, or to weaken or im-
545 pair the security intended to be affected under and by virtue of this instrument, and that he will keep all building- upon the said premises insured in such good and reliable insurance company or companies as the said party of the second part or his successors in trust may select for the insurable value thereof, the policy or policies of such insurance to be either in the name or names of the said paid party of the second part or his successors in trust, or to be so drawn that the loss, if any, shall be payable to him or them, and to be held by him or them as additional security thereto, but such insurance shall not at any time be required for a greater sum than the amount of said indebtedness then remaining unpaid, a reconveyance of said premises to be made to said Susan C. Marshall, her heirs or assigns, at her or their expense, on full payment of the indebtedness aforesaid and performance of the covenants and agreements made herein by the said party of the first part.

And in case of the death, absence, inability, or refusal to act of said party of the second part then William H. Bradley, of the
546 city of Chicago, shall be, and he hereby is, appointed and made successor in trust to said party of the second part under this deed, with like powers and authority, and said premises shall thereupon become vested in said successor in trust for the uses and purposes aforesaid.

And in case of the death, absence, inability, or refusal to act of

said party of the second part and of the said William H. Bradley, then Lewis H. Boutell, of said Chicago, shall be, and he hereby is, appointed and made successor in trust to said party of the second part and the said William H. Bradley under this deed, with like powers and authority, and said premises shall thereupon become vested in said successor in trust for the uses and purposes aforesaid.

In witness whereof the said party of the first part have hereunto set their hands and seals at the said city of Chicago the day and year first above written.

SUSAN C. MARSHALL. [SEAL.]
JAMES M. MARSHALL. [SEAL.]

[Two internal revenue stamps, $5.00 each.]

STATE OF ILLINOIS,
County of Cook, City of Chicago, } ss:

547 I, J. G. Shortall, a notary public in and for the city of Chicago, county and State aforesaid, do hereby certify that James M. Marshall and Susan C. Marshall, his wife, personally known to me as the real persons whose names are subscribed to the foregoing instrument as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said instrument, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called.

And the said Susan C. Marshall, wife of the said James M. Marshall, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of said instrument and her rights under the homestead exemption laws of the State of Illinois having been by me made known and fully ex-

548 plained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called, without the compulsion of her said husband, and that she doth not wish to retract the same.

Given under my hand and notarial seal this 14th day of February, A. D. 1872.

[NOTARIAL SEAL.] JOHN G. SHORTALL,
Notary Public.

Trustee's Sale.

Whereas Susan C. Marshall and James M. Marshall, her husband, did, by their deed of trust dated the thirteenth day of February, A. D. 1872, and recorded in the recorder's office in Cook county, Illinois, in book 56 of records, page 48, convey to the undersigned, in trust, the real estate hereinafter described to secure a certain bond of the

said James M. Marshall of even date therewith in the penal sum of twenty thousand dollars, conditioned for the payment to
549 Francis Bradley, his executors, administrators, or assigns, of the sum of ten thousand dollars, on the thirteenth day of February, A. D. 1877, with interest thereon at nine per cent. per annum, payable semi-annually;

And whereas default has been made in the payment of the principal sum of said bond and of the interest due thereon, and since February thirteenth, A. D. 1877, and there is now claimed to be due and unpaid of principal and interest on said bond and for insurance on said premises paid by said trustee, with interest thereon, the sum of twenty thousand three hundred and fifty-three dollars and nine cents, and application has been made to me as such trustee by the legal holder of said bond to sell said real estate in accordance with the provisions of said deed of trust:

Now, therefore, I, Lyman Baird, trustee as aforesaid, hereby give notice that, in pursuance of such application and under the powers and for the purposes expressed in said deed of trust, I will, on Saturday, the eighth day of March, A. D. 1879, at ten o'clock in
550 the forenoon, at the north door, nearest La Salle street, of the court-house, on Adams street, in the city of Chicago, Cook county, Illinois, sell at public auction, to the highest bidder, for cash, the premises conveyed by said deed of trust and all the right, title, benefit, and equity of redemption of the said grantors in said deed of trust, their heirs and assigns therein; which said premises are situated in the city of Chicago, county of Cook, and State of Illinois, and known and described as follows, to wit: Beginning at the southeast corner of lot numbered twelve (12), in block numbered three (3), in William Jones' addition to Chicago, and running thence north along the west line of Indiana avenue forty (40) feet; thence west parallel with the north line of said lot twelve (12), which said north line coincides with the south line of lot thirteen (13), in said block three (3), one hundred and fifty-eight (158) feet to an alley; thence south along the east line of said alley forty (40) feet to the south line of said lot twelve (12); thence east along said last-
551 mentioned line one hundred and fifty-eight (158) feet to the place of beginning; otherwise described as all of the said lot twelve (12) and the south twelve feet and three and a half inches of said lot 13 (13), according to plat recorded in recorder's office in said Cook county in book 133 of maps, page 37.

LYMAN BAIRD, *Trustee.*

Chicago, February 14th, 1879.

BOUTELL & WATERMAN, *Attorneys.*

This certifies that a notice, of which the annexed printed slip is a true copy, was published for one *successive* days, to wit, one times in the daily edition of the Inter-Ocean, a newspaper published and printed in the city of Chicago, of general circulation throughout Cook county and the State of Illinois; that the date of the first paper containing the same was the 14th day of February, A. D. 1879, and the date of the last paper containing the same was the

14th day of February, A. D. 1879, and that we have received six dollars for publishing the same.

Dated at Chicago this 14th day of Feb., 1879.

WM. PENN NEXON,
Publisher.

(Endorsed:) Deed of trust. Susan C. & Jas. M. Marshall
552 to Lyman Baird. Dated February 13th, 1872. To secure bond of $10,000.00. Assigned to James W. Paxton. Filed for record in the recorder's office in Cook Co., Ill., on the 14 day of Feb'y, A. D. 1872, and duly recorded in book 56 of records, page 48. No. 13340. Norman T. Gassette, recorder. Filed May 3, 1882. W. H. Bradley, clerk.

553 EXHIBIT.

Trustee's Deed from Lyman Baird to James W. Paxton.

This indenture, made this eight- day of March, in the year of our Lord one thousand eight hundred and seventy-nine, between Lyman Baird, trustee, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and James W. Paxton, of Wheeling, in the county of Ohio and State of West Virginia, party of the second part, witnesseth that whereas Susan C. Marshall and James M. Marshall, her husband, both of the city of Chicago, in the county of Cook and State of Illinois, by a certain trust deed, dated the thirteenth day of February, A. D. 1872, and recorded in the recorder's office of the county of Cook and State of Illinois, in book 56 of records, page 48, did bargain, sell, and convey unto the said Lyman Baird, as trustee, his successors in trust and assigns, all the premises hereinafter described, to secure the payment of a certain bond in said trust deed particularly described, to wit, a bond executed by said James Marshall, dated the thirteenth day of February, A. D. 1872, in the penal sum of twenty thousand dollars, conditioned for the payment to Francis Bradley, his executors, administrators, or assigns, of the sum of ten thousand dollars on the thirteenth day of February, A. D. 1877, with interest thereon
554 at nine per cent. per annum, payable half-yearly, in which bond it was provided that if default should be made in the payment of any of said interest, and such default should continue for twenty days, the whole of said principal sum secured by said bond should, at the option of the legal holder of said bond, at once become due and payable;

And whereas it was expressly provided in said trust deed that in case default should be made in the payment of the said principal sum or the interest thereon, secured by said bond, or any part thereof, when the same should become due and payable, either by election of the legal holder of said bond or by the maturity of said bond, or in case of the breach of any of the covenants or agreements in said trust deed mentioned, then, on the application of the legal holder of said bond, the said Lyman Baird, after having first given twenty days' notice of the time and place of such sale by publica-

tion in any one of the daily newspapers that might then be published in the said city of Chicago in the English language, personal notice of such sale to the grantors in the said trust deed or their legal representatives being waived, might sell and dispose of said premises and all right, title, benefit, and equity of redemption of the said grantors in the said trust deed, their heirs and assigns therein, at public auction, at the north door of the court-
555 house in the said city of Chicago, in said Cook county and State of Illinois, to the highest bidder for cash, and also make, execute, and deliver to the purchasers at such sale good and sufficient deed or deeds of conveyance for the premises so sold;

And whereas, also, default having been made in the payment of the principal sum of said bond and of the interest due thereon on and since February thirteenth, A. D. 1877, and the legal holder of said bond having applied to me, as such trustee, to cause said premises herein described to be sold for the purposes mentioned in and in accordance with the provisions of said trust deed, I, the undersigned, party of the first part, on the fourteenth day of February, A. D. 1879, caused due notice to be published in the Inter-Ocean, a newspaper published in the said city of Chicago in the English language, that said premises hereinafter described would, on the eighth day of March, A. D. 1879, at the hour of ten o'clock in the forenoon of said day, be sold at public auction at the north door, nearest La Salle street, of the court-house, on Adams street, in the city of Chicago, in said county of Cook, to the highest bidder for cash, by virtue of the power and authority in me vested by said trust deed;

And whereas, also, the said premises having been by the said party of the first part, on the eighth day of March, A. D. 1879,
556 at ten o'clock in the forenoon of the said day, in the manner prescribed in and by said trust deed and at the place last aforesaid, in pursuance of said notice, offered for sale at public auction to the highest bidder for cash, and the said party of the second part having been the highest bidder therefor, and having bid for the tract hereinafter named the sum of ten thousand dollars and was duly declared the purchaser thereof;

Now, therefore, this indenture witnesseth that the said party of the first part, as trustee as aforesaid, for and in consideration of the sum so bid as aforesaid, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has conveyed, aliened, remised, released, and confirmed, and by these presents does convey, alien, remise, release, and confirm, unto said party of the second part, and to his heirs and assigns forever, all the following-described lot, piece, or parcel of land, situate in the county of Cook and State of Illinois, known and described as follows, to wit: Begining at the southeast corner of lot numbered twelve (12) in the block numbered (3) in Williams Jones' addition to Chicago, and running thence north along the west line of Indiana avenue forty (40) feet; thence west, parallel with the north line
557 of said lot twelve (12), which said north line coincides with the south line of lot thirteen, in said block three (3), one hundred and fifty-eight (158) feet to an alley; thence south along the east

line of said alley forty (40) feet to the south line of said lot twelve (12); thence east along said last-mentioned line one hundred and fifty-eight (158) feet to the place of beginning; otherwise described as all of said lot twelve (12) and the south twelve feet three and a half inches (12.3½) of said lot thirteen (13), according to plat recorded in the recorder's office in said Cook county, in book 133 of maps, page 37, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, as the same are described and conveyed in and by the said trust deed, and also all the estate, right, title, interest, property, claim, and demand whatsoever, both in law and equity, of the said grantors in said trust deed and their assigns, as well as of the said party of the first part, of, in, and to the above-described premises, with the appurtenances, as fully to all intents and purposes as the said party of the first part hath power and authority to sell and convey the same by virtue of the said trust deed; to have and to hold the said above-granted premises, with their appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party has hereunto set his hand
558 and seal the day and year first above written.

LYMAN BAIRD, *Trustee.* [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Charles F. Marsh, a notary public, residing in, and in and for, said county, in the State aforesaid, do hereby certify that Lyman Baird, who is personally known to me, to be the same person, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said — as his free and voluntary act, as trustee, for the uses and purposes therein set forth.

Given under my hand and official seal this 31st day of March, A. D. 1879.

[SEAL.] C. F. MARSH,
Notary Public.

(Endorsed:) Trustee's deed from Lyman Baird, trustee, to James W. Paxton. State of Illinois, Cook county, ss. No. 216,360. This instrument was filed for record in the recorder's office, Cook county aforesaid, on the 1 day of April, A. D. 1879, at 10 o'clock p. m., and recorded in book 896 of records on page 53. Jas. W. Brockway, recorder. Filed May 3, 1882. W. H. Bradley, clerk.

559 And also be it remembered that the said report, evidence, exhibits, and documents above set out comprised all the evidence in said cause and cross-cause.

In witness and certification whereof the Hon. Thomas Drummond, judge of the said circuit court before whom said hearing was

had and by whom the decree thereon was entered, has hereto set his hand and seal of the day of said decree.

THOMAS DRUMMOND. [SEAL.]
Judge of the Circuit Court of the United States for Said Northern District and State of Illinois.

Endorsed: Filed July 24, 1883. Wm. H. Bradley, clerk.

560 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein James W. Paxton is the complainant and Susan C. Marshall is the defendant, as the same appear from the files and records of said court now remaining in my custody and control, and I further certify that on the twenty-fourth day of July, 1883, said complainant, James W. Paxton, deposited the sum of one thousand dollars in said court, in accordance with said decree of July twenty-fourth, 1883, for said defendant, Susan C. Marshall (now Knight), and that said deposit has ever since remained, and still remains, in said court, said Susan not having received or claimed the same or any part thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this seventh day of August, A. D. 1884.

[Seal of Circuit Court U. S., Northern Dist. Illinois. 1855.]

WM. H. BRADLEY, *Clerk.*

561 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

To James W. Paxton, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. 1884, pursuant to an appeal entered of record in a certain cause in equity, filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein you, the said James W. Paxton, were complainant and Susan C. Marshall was defendant, from the decree in said cause, to show cause, if any there be, why the aforesaid decree in said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thomas Drummond, judge of said circuit court, this 18th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

THOMAS DRUMMOND,
Cir't Judge.

We accept service of the above citation this 18 Ap'l, 1884.

BOUTELL & WATERMAN,
Sol'rs for Said James W. Paxton.

[Endorsed:] Supreme Court of the United States. James W. Paxton *vs.* S. C. Marshall. Citation to October term, A. D. 18–.

562 In the Supreme Court of the United States. October Term, A. D. 1884.

SUSAN C. KNIGHT, formerly MARSHALL, Appellant,
vs.
JAMES W. PAXTON, Appellant.

And now comes in said Supreme Court said appellant, by her counsel, and says that in the above record and proceedings is manifest error in this, that said circuit court, in and by its decree aforesaid, has erred in not dismissing said bill of said Paxton for want of equity, and did also err in giving said Paxton the relief in said decree given, and did further err in dismissing the cross-bill of said appellant in said cause, and in not giving to said appellant the relief in her said cross-bill prayed, and in divers other matters has erred in said proceedings and decree; wherefore said appellant prays the judgment of said Supreme Court in that behalf and as unto equity may appertain, and as in duty bound, &c.

By GEORGE L. PADDOCK,
Her Solicitor & Counsel.

Endorsed on cover: N. Illinois C. C. U. S. No. 608. Susan C. Knight (formerly Susan C. Marshall), appellant, *vs.* James W. Paxton. Filed September 27, 1884.

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ADDITIONAL TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 50.

SUSAN C. KNIGHT, (FORMERLY SUSAN C. MARSHALL,)
APPELLANT,

vs.

JAMES W. PAXTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 2 1887.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE NORTHERN DISTRICT OF ILLINOIS.

James W. Paxton
vs.
James M. Marshall *et al.*

The deposition of James M. Marshall, a witness in the above entitled cause taken on March 16, 1880, ten o'clock A. M., in pursuance of the order of said court entered therein on the 15th day of March, 1880, to be read in evidence on behalf of defendants in said cause.

Present: Mr. Paddock, of counsel for defendants, and Mr. Waterman, of counsel for plaintiff; it being agreed by counsel that said deposition may be taken in short-hand by Alice C. Nute, as notary public, written out in long-hand, and the signature of witness thereto being waived by consent of counsel. Said witness being by me first duly sworn, testified as follows:

Direct Examination by Mr. Paddock.

Q. What is your name?
A. James M. Marshall.
Q. Where do you reside?
A. Chicago, Illinois, Cook county, 930 Indiana avenue.
Q. You are one of the defendants in this suit, Mr. Marshall?
A. Yes, sir.
Q. Do you recollect of signing a deed of trust in controversy in this suit, bearing date on the 13th of February, 1872, signed by yourself and wife, running to Lyman Baird of Chicago, do you remember this fact?
A. I remember signing a paper.
Q. I now show you the paper which Mr. Waterman has just handed me for that purpose, and ask you if that is the one referred to. (Handing witness paper marked A. C. N.)
2 A. Yes, sir; that is my signature.
Q. You recollect this as being the deed in controversy?
A. I don't know whether it is the deed or not, only by the description of property.
(Counsel reads description.)
A. Yes, sir; that is it.
Q. Then I understand you remember signing the deed which I have shown you?

A. Yes, sir.

Q. State when you signed that—on what day?

A. I signed that down at Mr. Shortall's office down on Wabash avenue, on February 14th, as I went down that morning.

Q. In what year?

A. 1872; I went into the basement there where I was; I think he was down a little below there where they were fitting a vault. It is where they moved their office after the fire.

Q. On Wabash avenue?

A. Yes, sir.

Q. State on what day Mrs. Marshall signed.

A. She signed it on the 14th of February, 1872.

Q. On the same day?

A. Yes, sir; she signed hers at the house.

Q. At what hour in the day did she sign it?

A. It was after breakfast; I was going down town between half-past eight and nine o'clock—along there—half-past eight or so; the usual hour for anybody to get down town—about nine.

Q. Did you take the deed when she signed it down town?

A. Yes, sir; I did.

Q. Where did you go with it?

3 A. I went to Mr. Shortall's as I remarked a while ago and signed it.

Q. Who was present at Mr. Shortall's office when you signed it?

A. Well, the boys around there.

Q. Was Mrs. Marshall present?

A. No, sir.

Q. Had you left her at the house?

A. I had, sir; in bed sick.

Q. What was her condition at that time—how sick was she?

A. Well, she was in such a condition she could not get out of bed.

Q. Did she leave the house that day?

A. No, sir, not to my knowledge; that is also signed in the presence of Mrs. Noble, they were all there in the room when she was sick.

Q. I am speaking of what took place at Mr. Shortall's office; Mrs. Marshall was not present there?

A. No, sir.

Q. Give the hour in the day in which this signing at Mr. Shortall's took place?

A. I should think about nine or half-past, along there.

Q. What did you do at Mr. Shortall's office in connection with this deed?

A. As soon as he put his name and stamp on it, I took it across

the way there and handed it to Mr. Baird, and he looked at it and handed it over to somebody else, and says he, "That is all right."

Q. Mr. Baird the grantee—Lyman Baird?

A. Mr. Baird himself.

Q. About what time in the day did you hand it to Mr. Baird, the grantee?

A. It must have been about half-past nine because I wanted
4 to get $3,000.00 of this money to use at Sol Smith's bank there as soon as it opened, or Badger's, I don't know which, and then they remarked they would straighten up the balance of the account.

Q. Did you obtain $3,000.00 from Mr. Baird?

A. At that time?

Q. At this time?

A. I did, sir; a $3,000.00 check.

Q. How long were you in Mr. Shortall's office on this occasion of the acknowledgment by yourself?

A. I should not think more than five or eight minutes—ten minutes, just as soon as he could sit down and write his name to it and get his stamp; I don't think over ten minutes, because I was anxious to get the thing around, you know, to meet my bank arrangements.

Q. State whether Mrs. Marshall on this occasion appeared before Mr. Shortall, or so far as you know, whether she did appear before him during that day?

(Objected to.)

A. Never, to my knowledge, when she signed the paper, and he never came near the house, so far as I know; he was not present when she signed the paper.

Q. Did you see anything more of the deed of trust after you delivered it to Mr. Baird on the 14th of February?

A. I never seen it till it came around due, I guess. I think that is the first time I ever saw it.

Q. How much money did you obtain at the time of this deed of trust?

A. $10,000.00, less expenses.

Q. For what purpose was that money used?

A. It was used in my business.

5 Q. What was your business?

A. Real estate, brokerage and buying and selling and so forth. They got five of it. Yes, I owed them five.

Q. Was any part of it used for putting up improvements or buildings upon these premises where we now are?

A. This was built in 1862, ten before, we had three coats of paint worn out on it.

Q. Where have you resided the last few years?

A. Ever since I first married in November, 1860—I boarded

from that up to April, 1861, then I went to housekeeping, I came up here in December.

Q. What year?

A. In 1861.

Q. How long have you lived on this lot?

A. Since December, 1861.

Q. Has this been your homestead since that time, then?

A. Yes, sir.

Q. What family have you had?

A. Six children.

Q. A wife and six children?

A. Yes, sir, all born here except one.

Q. Will you please carry your mind for a moment back to this meeting between yourself and Mr. Shortall at which you signed the deed, and state what passed between you and him with reference to the acknowledgment of the deed on that occasion?

(Objected to.)

A. Nothing in the world.

Q. What was done?

A. He came up from down-stairs with a cigar in his hand smoking, and says I, "John, I want you to fix up this paper." He
6 looked it over and I don't know whether—he made this kind of a remark, says he, "What are you going to do now?"—or something—some little casual remark like what he used to you or I going in there now, he was very anxious to get his abstracts straightened around and people came in there.

Q. What else took place on that occasion?

A. Well, he may have said, "Jim, let us not stop to talk any to-day, I am so busy, I have so much to do; we will talk some other time." He was always fooling and joking around and smoking, and we going to dinner together whatever was said was said in a common office, was where all the boys were sitting around writing.

Q. What, if anything, did Mr. Shortall do with the deed when you told them that there was a deed you wanted fixed?

A. Here is what I said to him when I first went in there; says I, when he came up from down below, says I, "John, I want you to put your Jews harp on that"—that is a kind of a nick-name we have with the notaries. Says he, "What are you going to do now?" something of that kind. He just opened it, put his seal on it and his name on it, that is the exact words—the Jews-harp.

Q. Did you pay him a fee for that, do you remember?

A. I don't remember about that, I can tell by looking on my cash book; all these little items I have down from day to day.

Q. Look again at this paper, the same I showed you before, and state whether this certificate which bears date the 14th of Feb-

ruary, 1872, and is signed by John G. Shortall, notary public, is the paper to which you refer when you say he put his name to the deed? (Handing witness paper.)

A. His acknowledgment to the deed?

Q. Yes.

A. Yes.

7 Q. That is where he put his name, is it? (Indicating.)

A. Yes, sir.

Q. About how long a time did this interview occupy between you and Shortall, up to the time when he put his name to the acknowledgment, and put on his seal and gave you back the paper?

A. From the time he came up from down below?

Q. Yes; about how long a time had you been doing business with him?

A. I guess eight or ten minutes, as I said awhile ago; he did it up as lively as he could in a business way. There was others standing around wanting something done by Shortall.

Q. Had you had former business dealings with Shortall?

A. I had.

Q. How well were you acquainted with him?

A. Well, we had the usual business acquaintance and were neighborly friends; he lived over on Prairie avenue there.

Cross-Examination by Mr. Waterman.

Q. Mr. Marshall, who prepared this deed?

A. It was prepared at Messrs. Baird & Bradley's office, I think; it looks like Mr. Bradley's writing, don't it? It is either one of the two, or else it is that little, old, chunky fellow there—I don't know what his name is, I have forgotten; I know him very well.

Q. When did you get it?

A. When did I get that paper?

Q. Yes.

A. I got that paper the evening before going up home.

8 Q. The evening before?

A. Yes, sir; it was on Wabash avenue.

Q. Did you get it at Baird & Bradley's office?

A. I could not say whether the paper was got there or whether they sent over to my office, I cannot say about that, but anyway I brought it up that night.

Q. Do you recollect who wrote the initials, S. C. M., that are on the stamps that are on the deed—United States revenue stamps?

A. I did not, sir.

Q. Who wrote J. M., that is on there?

A. I did not, sir.

Q. Do you recollect when those stamps were canceled?

A. I do not, sir; I presume they were canceled at the same

time; that looks like Mr. Baird's figures (indicating), but the letters I don't know. Here is one of my letters (indicating).

Q. You say you obtained the deed the night previous at the office of Baird & Bradley?

A. Or else it was sent to me, I don't know which, for the purpose of my bringing it up to have my wife sign it, you know; I was on Clark street then, 119, I think.

Q. Do you recollect whether prior to obtaining the deed you said anything to them about having your wife sign the deed, where she would sign it, whether she would go to their office or whether she would sign it here at the house?

A. Never in my life.

Q. Do you recollect what, if anything, was said at the time you obtained the deed from them?

A. I do not, sir; I am pretty sure there was nothing; that was eight years ago, it is quite a little while back.

Q. You don't recollect whether the deed was handed to you or whether the deed was sent over to your office?

A. No sir, I don't, because they very often fix up those papers in a large envelope and sent them over. I tell you why I think I called for it, they being on Wabash avenue on my way home. They have an office up there, you know. I am more impressed with the fact that I called for it from those circumstances.

Q. How near did Shortall live at that time to where you live?

A. The same place where he is now, on Prairie avenue near 16th, I guess.

Q. This house is near what street?

A. Between 18th and 20th.

Q. How long had you known Mr. Shortall at that time?

A. Well, I really could not call that to mind either. Quite a while.

Q. Ever since you have been in the city?

A. No, sir; no, I think not. Oh! no. I was there a good while before he was. I don't know, Mr. Waterman, how far back that would be.

Q. Did I understand you to say that on the morning on which you handed this deed in to Baird & Bradley you got some money from them on it?

A. Yes, sir.

Q. How much?

A. $3,000, to meet some little arrangement that was coming up that morning in bank.

Q. How early in the morning was it?

A. I should think 9 or half-past 9, somewhere along there.

Q. Before the opening of the bank?

A. Yes, sir. I wanted to be ready on some settlements on deals.

I don't think the money lay in bank three seconds before it was taken out. Then the other 5,000 they got and $250 interest.

10 Q. Is Mr. Shortall a social acquaintance of yours?

A. Well, yes, sir; we passed the compliments of the day socially, as you or I would.

Q. Now, after receiving this money from Baird & Bradley where did you go?

A. I said I went to Sol. Smith's bank, or Badger's, I don't know which.

Q. And paid the money?

A. The money was not going to the bank but to other parties that agreed to meet me there to settle up some things. I think it was in Sol. Smith's at the corner of Peck Court.

Q. Do you recollect what other business you had to do that day?

A. I don't know. My cash book will show what I did do.

Q. You don't remember, yourself?

A. No, sir; I don't.

Q. Do you remember where you took dinner that day?

A. There was only about one place we could get it and that was at Burke's. I came back up town from my shed; what was called my shed down on Clark street.

Q. The business was being done in sheds most anyway, at that time, wasn't it?

A. I rather think it was. After I got all through I came up. I usually came up there about 2 o'clock for dinner.

Q. This was just a short time after the great fire in the city?

A. It was not very long after the great fire.

Q. And business houses of all kinds were scattered?

A. Yes, sir; a good deal of the time doing nothing.

Q. Everything was in confusion and it took a great deal of time to do any business?

A. Yes, sir.

Q. You think you took dinner at Burke's that day?

11 A. I think so; I am not positive, you know; I might have taken it somewhere else—wherever I struck, but that was kind of a headquarters.

Q. Do you know where Burke's restaurant was at that time?

A. That old Stearns building, I think; I am pretty sure it was.

Q. Do you remember what you were engaged in that afternoon?

A. Well, I should think I was going through my regular routine of business.

Q. Where was your office at that time?

A. I was in a shed down at 119 Clark.

Q. Did you see Mr. Shortall again that day?

A. I did not, sir.

Q. Do you remember when you did see him again next?

A. I could not give the date.

Q. What time did you go home that day?

A. Well, I suppose the ordinary hour; along about 5 o'clock.

Q. How long did Mrs. Marshall's illness last?

A. I think that held on for about a week; the worst part of it was a week or ten days.

Q. After that she recovered, so as to be able to go out and attend to her duties?

A. Yes, sir; of course; or else she would not be here now.

Q. I understood you to say that you did obtain on this deed $10,000?

A. Yes, sir.

Q. How long after the executing of the deed was it?

A. Which?

Q. The balance of the $10,000. You received $3,000 on the morning you took the deed in; how long afterwards did you receive this?

A. Then they took five out, that is eight—I don't know—
12 the cash-book down at the office shows, though, exactly the settling up.

Q. They took five out to pay an indebtedness of yours?

A. Yes, sir. Then he gave me three clean thousand, and that is eight thousand; then took commissions, and one thing and another, out, and that left me about $1,800 to $1,900 or $1,700. I don't know what it was, more or less—I don't know. That settlement was made up; there was no hurry about it. I did not want to use the balance of the money, and I was busy and it ran along. My book will show it, and so will theirs.

Q. It must have been about 9 o'clock in the morning that you met Mr. Shortall?

A. Well, I should think so; I could not give the minute now.

Q. Do you recollect where his office was then, at the time that you met him?

A. Across the way, there, (indicating) in one of these two-story and basement buildings.

Q. Across the way on what street?

A. On Wabash avenue.

Q Near what number?

A. Well, I should think it would be in the next block, about midway. Those abstracts that were made over there will show.

13 *Re-direct Examination by Mr. Paddock.*

Q. Mr. Waterman has spoken about your bringing the deed of trust to your house the previous evening?

A. Yes, sir.

Q. Was Mr. Shortall at your house that evening?

A. No, sir.

Q. Had you seen him that day?

A. No, sir.

Q. Did he ever come to your office that evening or the following day, or any other time so far as you know, to take the acknowledgment of this deed of trust?

A. No, sir, never.

Q. Did he ever, so far as you know, take the acknowledgment of Mrs. Marshall, your wife, to that deed of trust at your house or at any other place?

(Objected to.)

A. No sir, not to my knowledge.

Re-cross Examination by Mr. Waterman.

I suppose, Mr. Marshall after this deed was executed you continued to do business; were you down town a greater portion of the day every day?

A. Of course I tried to run my business.

Q. It was your custom right along after this deed, I may say for years after the deed was executed to go away in the morning and remain away during the day, was that the case?

14 A. Why, I would be away from the house, I would leave in the morning and come back in the evening, without somebody was sick, you know, or I was sick myself, or for some other purpose.

Q. Have you been out of the city—were you out of the city during the years '72 or '73?

A. Well, I expect I was.

Q. Do you recollect?

A. No; I could not recall it to mind, you know.

Q. Did you visit Kentucky during '72 or '73?

A. No, sir; I have not been in Kentucky since 1860; 1860 is the last time.

NORTHERN DISTRICT OF ILLINOIS, ss.:

I, Alice C. Nute, the above named notary, do hereby certify that the foregoing deposition was duly taken by me in shorthand at the time and place and under the order and stipulation aforesaid, and by me and in my presence reduced to longhand, and I certify that the same is a true and correct statement of said witness' testimony.

Witness my hand and seal this 16th day of March, A. D. 1880.

ALICE C. NUTE,
Notary Public.

[SEAL.]

Endorsed.
Filed March 16, 1880.
WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, ss.:

I, William H. Bradley, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the deposition of James M. Marshall, filed in said Court on the 16th day of March, A. D. 1880, in the cause wherein James W. Paxton is the Plaintiff and James M. Marshall *et al.* are the Defendants, as the same appears from the original thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Chicago, in said district, this 20th day of August, A. D. 1887.

[SEAL.] WM. H. BRADLEY, *Clerk.*

15 IN SUPREME COURT OF THE UNITED STATES.

Susan C. Knight, Appellant,
vs.
James W. Paxton, Appellee.

(Appeal from Circuit Court, N. Dist. of Illinois.)
October Term, A. D. 1887.

It is stipulated that the deposition of James M. Marshall referred to in the order entered by the said Circuit court in said cause on the 10th day of July, 1880. (Record; Marg. p. 30), and omitted by the clerk of said Circuit court in making up the record in said appeal, be certified by said clerk as a part of said record; and the same is hereto attached for that purpose.

GEO. L. PADDOCK,
Of Counsel and Solr. for Appellant.
L. H. BOUTELL,
Solr. for Appellee.

124-552

FILED
OCT 10 1887
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1887.

IN EQUITY.

SUSAN C. KNIGHT, (FORMERLY SUSAN C. MARSHALL,) *Appellant*,
vs.
JAMES W. PAXTON, *Appellee.*

Appeal from Circuit Court, Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

GEO. L. PADDOCK,
OF COUNSEL FOR APPELLANT.

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Supreme Court of the United States,

OCTOBER TERM, A. D. 1887.

IN EQUITY.

SUSAN C. KNIGHT, (FORMERLY SUSAN C. MARSHALL,) *Appellant*,
vs.
JAMES W. PAXTON, *Appellee*.

Appeal from Circuit Court, Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

MAY IT PLEASE THE COURT:

This is an appeal in an equity cause. The appellant was defendant below; the decree appealed from divested her rights in a dwelling house and lot on Indiana avenue in Chicago, expelled her and her children therefrom, and gave the title and possession to appellee upon terms of payment into court of the sum of $1,000, that being the amount allowed by the Illinois homestead act to grantors of mortgages of the homestead, in which the homestead exemption of $1,000 has not been waived.

The record (320) shows the property so divested to be

$8,000 or $10,000 in value. The decree therefore deprived appellant of that amount of property, less the $1,000 allowed as for the "homestead exemption," should she see fit to apply for it.

THE RIGHTS OF APPELLANT ASSERTED in her answer and cross-bill, and to be asserted before this court, bear, however, no relation to the homestead exemption acts of our state; they were derived in the year 1860, not under those acts, but by means of an antenuptial deed in which her husband, James M. Marshall, then a bachelor, was grantor, and his brother, Thomas E. Marshall, grantee and trustee. She stands upon the ground that the legal title so conveyed in trust for her and her children still rests in her trustee, Thomas E. Marshall. She will insist also that the trusts in her favor expressed in that deed remain operative for the residue of the term of her natural life, and should have been enforced in the sense in which courts of equity administer trusts relating to the separate equitable estate of a married woman, to the exclusion of her husband's creditors.

THE APPELLEE obtained his decree as a creditor of appellant's husband, James M. Marshall, secured by the individual bond of the latter, and by a mortgage or trust deed, with power of sale, to Mr. Lyman Baird, hereafter for convenience called the Baird trust deed. This Baird trust deed bore date February 13, 1872, was recorded February 14, 1872, and was signed by appellant as well as her husband. The husband appeared before a notary and acknowledged it. The appellant never so appeared and never acknowledged it, and a certificate of the notary attached to the deed and purporting to show acknowledgment by both is, as to the appellant, wholly untrue.

In its interlocutory order (74) the court finds, and the finding accords with the evidence, "that the said "Susan C. Marshall did not acknowledge said trust "deed."

We are not able to embody in the record any opinion of the court upon the questions involved, but take it as apparent from the decree itself that the appellant's separate estate was held bound by reason of the signature of herself and husband to the Baird trust deed; obviously it was held that the appellant had by such joinder of signature, capacity to make and had made a valid mortgage of her estate to secure her husband's debt; but that, as acknowledgment was under the local statute, part of the *factum* of a homestead waiver, there had been no such waiver. The mortgage was therefore held valid, but subject to the exemption of $1,000.

Dissenting from the result of the decree, however reached or reasoned out, appellant prays this court to inquire not only into the nature and legal effect of the conveyancing, the mere title papers; but also to give judgment upon the extraordinary circumstances under which, and the purposes for which her signature was obtained to the Baird trust deed.

Essentially the issues are between the husband's creditor setting up a foreclosure of the Baird trust deed of 1872, and the wife demanding that a court of equity protect her possession under the antenuptial deed of 1860. The wife's trustee was not a party to the Baird trust deed; nor is he a party to the appellee's bill. Ignoring the antenuptial trust, appellee has dispensed with the trustee.

Appellee's Original Bill was filed May 13, 1880. (3.) Until amended July 18, 1883 (71) it alleged that

the Baird trust deed (5) "was, on the 14th day of Feb-"ruary, 1872, duly acknowledged by the said James M. "Marshall and Susan C. Marshall."

The bill, after setting up that on February 13, 1872, James M. Marshall became indebted to appellee in the sum of $10,000, and his execution of the bond, and the execution by him and his wife of the Baird trust deed of that date; its acknowledgment as above, its record, and its foreclosure, upon default of payment by trustee's deed of Lyman Baird of March 8, 1879, conveying to appellee, in fee simple, the premises described; states (7) a demand upon appellant and her husband for possession; describes the occupancy of such premises as a residence; states that appellant and her husband *claimed* that appellant had never acknowledged the Baird deed of trust and released her homestead, and avers that "orator always "believed that said trust deed was properly acknowledged "by said Susan C. Marshall, as well as by the said James "M. Marshall, and that by said deed they had legally "released all their rights in said premises under the home-"stead laws of the State of Illinois."

The bill further shows the excess in value of the premises over the homestead rights, and that "orator is enti-"tled to the possession of so much of said premises as "may not be set off to the defendant for a homestead, or "in case said premises are incapable of division, is enti-"tled to the possession of the whole of said premises "upon payment into court, for the use of said defendants, "of the sum of $1,000, which payment your orator is ready "and willing, and hereby offers to make."

Prayer for the above and general equitable relief (8).

The bill has not been changed from its original form, unless the amendment of July 18, 1883, changed it; that

altered (71) the averment as to acknowledgment, so that it now reads, "which said trust deed purported to be on the "14th day of February, 1872, duly acknowledged." We perceive no direct averment that it was *not* acknowledged.

THE ANSWER OF APPELLANT, filed July 1, 1880 (13), denies personal knowledge of the appellee's loan and Baird trust deed, states and relies upon the antenuptial deed of November 21, 1860, sets out its provisions (16), shows its record in Cook county; shows appellant's subseqent marriage to James M. Marshall, and the birth of their children; asserts (17) the trusts of the deed to be still in force, and (18) avers actual notice to appellee and his agents, Lyman Baird and Francis Bradley, "of its "purpose and contents aforesaid at and before the date "of the said bond of James M. Marshall to said Bradley, "and the signature by respondent of the deed of trust to "said Baird."

It further states the understanding and agreement between herself and husband, that the land in question should be and remain the family home, and be kept free from any risk of the business of her husband, that of a real estate dealer and agent, and in nowise incumbered by her and her husband, or either of them; of all which complainant had notice; that the deed to Thomas E. Marshall (18) was made in contemplation of such marriage and of such separate use; that appellant was then, and often since, advised by counsel that the legal effect of the last named deed "was to deprive respondent and her "husband of all power of disposition or incumbrance "over said land to secure the creditors of said husband, "and she therefore (19) submits to the court that such "was and is the legal effect thereof, and asks the con-"struction thereof by the court."

She further avers that it was not until recently, and since the date of the trustee's deed of Lyman Baird to appellee, that she became aware it was claimed that she had, in fact, subscribed her name to the Baird deed of trust, and thereby had conveyed her aforesaid homestead as a surety for her husband's debt.

The answer (19) further shows that, "at the date of "said trust deed to said Baird and for some years previ- "ous said Baird and Bradley were and had been engaged "at Chicago, in the business of loaning money for capi- "talists upon real estate security, and as such loan agents "represented, among others, the complainant in this case; "and that her said husband was, during the same period, "actively engaged in his aforesaid business, and making "frequent sales and incumbrances of real estate on his "own behalf and for various parties for whom he was "acting as agent, in the course whereof respondent was "occasionally called upon to sign deeds, always, however, "supposing them to relate to other lands than those men- "tioned in said bill, and always supposing such signatures "to be waivers of dower only, or, at least to have no "reference to said homestead land, and that said Baird "and Bradley at all these times (19) well knew the tenor "and effect of said marriage settlement deed."

The answer further states that appellant is informed and believes and so avers "that said deed of trust to "Lyman Baird was sent by said complainant, through "his agents, to the residence of respondent aforesaid for "respondent's signature on the 14th day of February, A. "D. 1872; that in pursuance of authority from the said "complainant and with his knowledge and approval, and "without the knowledge or consent of respondent, the "agents of said complainant caused the said deed to be

" prepared and presented to respondent for her signature " on said day; that at that time respondent was confined " to her bed by sickness, and by reason of such sickness " and the effect of narcotics prescribed by her physicians, " respondent was not of sufficient mental capacity to read " or understand the said deed if the same had been read " to her; that said deed, as respondent has since learned " by inspection was so long and prolix and framed in such " technical language that in respondent's aforesaid mental " and physical condition it was not possible for her to " comprehend its meaning and effect." (21.)

The appellant's answer further states that, on being informed by said James M. Marshall (to whom, as she believes and on information and belief avers, the same was intrusted by the aforesaid agents of complainant, in pursuance of their authority from complainant, for the purpose of obtaining the signature of respondent thereto), that said deed related to a lot on Prairie avenue in which respondent and husband were interested, other and different from said homestead lot on Indiana avenue; that, having no reason to disbelieve, but relying upon and believing the same, and having no knowledge or information to the contrary, and no knowledge or information concerning any pending dealing relating to said homestead, respondent at the solicitation of the said James M. Marshall, unwittingly subscribed her name to the said instrument; but she says that, had she known or been informed that said instrument related to her said homestead she would on no account have signed the same.

The answer further shows that she "never gave said " James M. Marshall any authority to alienate or incum- " ber, or agree to alienate or incumber said homestead " land (22), or to execute or agree to execute on her be-

" half the said deed of trust; and that whatever he did in " respect to procuring respondent's said signature he so " did in pursuance of some authority or direction from " the agents of complainant, as aforesaid, and believes and " so states; *and so respondent says that said deed of trust* " *to said Lyman Baird is not her act and deed*; " *that it is wrong and inequitable to hold her bound* " *thereby in favor of said complainant as the grantee of* " *said Baird, his agent in said transaction;* that said " Baird was, under the circumstances, as also com- " plainant, put upon inquiry to ascertain whether, in fact, " respondent had executed said deed and was bound " thereby, and that complainant had notice or the means " of notice of the facts aforesaid."

The answer also shows that on the face of the deed and bond appellant if bound at all, which she did not admit, was not otherwise bound than as a surety and should be deemed exonerated by the dealings without her consent between appellee and James M. Marshall.

The answer states (26) as to the Baird trust deed " re- " spondent believes the same was acknowledged by said " James M. Marshall, but she denies that respondent ever " acknowledged the same, and she says that the certificate " in said deed which has recently been shown her pur- " porting to evidence such acknowledgment by her is, " as to her, wholly untrue and unauthorized by her."

The respondent also states the bringing of the forcible detainer suit April 25, 1879, that afterward a trial by jury was had in such cause " which was the first opportunity " respondent had to claim her rights in any court and " deny the effect and purport as to her, of said Baird deed " and the validity of the pretended certificate of acknowl- " edgment thereon endorsed;" that on such trial respond-

ent introduced evidence and as respondent believes satisfied said jury that said deed was not the act and deed of respondent; that respondent had not knowingly signed the same, but had signed the same under the representations aforesaid and that said certificate of acknowledgment was untrue and void; that the said jury returned a verdict in favor of the defendants which at the suggestion of the court was modified and entered as a verdict of guilty as to respondent's husband and not guilty as to this respondent; and which verdict was afterwards, as respondent believes, vacated by said court not because of any error of said jury in so finding, but in order to give said complainant a second trial in analogy to actions of ejectment—that complainant has taken the benefit of said order of vacation—that said case at law is still pending in said court and respondent and her husband harassed at the same time with the present suit which double proceeding she submits (27) is inequitable and improper and that the present cause should be dismissed for that reason, or at least stayed till the determination of said detainer suit; from all which matters (28) and the other proofs in this case it will appear that respondent is not in equity bound as having executed said deed, etc., etc.

THE ANTENUPTIAL DEED REFERRED TO IN THE ABOVE ANSWER bore date November 21, 1860. It is set out at large in the record (464). We ask the court's attention to its entire tenor and effect as there exhibited. It witnesses that in consideration of the sum of one dollar, and for the purpose conveying the premises upon the trusts thereinafter to be named, concerning the same, the grantor conveys the premises in question by the description of "lot twelve and the south twelve feet three and

" one-half inches of lot thirteen in block three in William " Jones' Addition to Chicago, being forty feet front on " Indiana avenue in said city of Chicago," to hold IN TRUST that he, the trustee, his heirs and assigns "*shall* " *and will from time to time, let and demise said premises* " *and recover and receive the rents and income thereof and* " *pay over the same as and when received, into the hands* " *of Susan C. Larmon, of said city of Chicago, or to such* " *other person or persons as she, in writing under her* " *hand from time to time, may authorize, appoint and em-* " *power to receive the same, or at her option to permit and* " *suffer her, the said Susan C. Larmon, to occupy and en-* " *joy the same, or to let and demise said premises or any* " *part thereof, and to take and receive the rents and in-* " *come thereof during all the time of her natural life, for* " *her own separate use and support, so that the same shall* " *not be in the power or liable to the debts, control or en-* " *gagements of any future husband of the said Susan C.* " *Larmon*, she paying all taxes and assessments thereon " and all proper and necessary repairs thereof, and upon " the receipt of such rents and income to make, execute " and deliver in her own name, any and all necessary and " proper receipts and acquittances therefor and the re- " ceipts and acquittances so given by her or the receipts " of such person or persons as she may in writing au- " thorize, appoint and empower to receive the same as " aforesaid notwithstanding any coverture or whether she " will be covert or sole, shall be deemed and held to be " good and valid discharges in law, for all purposes what- " soever."

The trusts above expressed, relate:

1. To making leases and collecting rents by the

trustee, and payment of such rents into the hands of the wife or her appointees;

2. To permitting the wife to occupy; or,

3. Herself, to let the premises and receive the rents for her natural life;

4. For her separate use and support, so that the same shall not be in the power or liable to the debts, control or engagements of the future husband.

Upon the death of the wife there were limitations in trust in favor of the issue of the intended marriage, viz. (467):

" In case said Susan C. Larmon shall at her decease " leave surviving her child or children of her, said Susan " C. Larmon by her intended marriage to the said party " of the first part, then the said party of the second part " to hold said premises in trust to and for the only proper " use and benefit of such child or children until he, she or " they, and each of them shall have attained the age of " twenty-one years, or until the survivor or survivors of " such children shall have attained the age of twenty-one " years, then by a good and sufficient deed of convey- " ance, to convey said premises to such child or children, " and such issue of such child or children as may then be " deceased, as tenants in common," etc.

Following this provision for the children of the marriage are other and contingent limitations in favor of Susan E. Marshall, a sister of the trustor, and Ophelia K. Larmon, his sister-in-law, to take effect upon failure of issue by the marriage. (468.)

This clause was as follows:

" And in case the said Susan C. Larmon shall not at " her death leave surviving her any child or children by " her said intended husband, or the issue of a deceased

" child or children, then the party of the second part to " hold the said premises in trust for the use and benefit of " Susan E. Marshall, of Chicago, aforesaid, for and dur- " ing the full term of her natural life, in case she shall " survive the said Susan C. Larmon. And in case the " said Susan C. Larmon shall depart this life without is- " sue by her intended marriage, and the said Susan E. " Marshall shall not survive the said Susan C. Larmon, " then the said party of the second part shall hold the " said premises in trust for the sole use and benefit of " Ophelia K. Larmon, of Chicago, aforesaid, for and dur- " ing the full term of her natural life."

In case Ophelia K. Larmon should survive Susan C. Larmon and Susan E. Marshall, and in case of the decease of Susan C. Larmon without issue by the marriage, and of the decease of Susan E. Marshall and Ophelia K. Larmon, the deed further provides, " then and " immediately thereafter the said party of the second " part shall reconvey the said premises to the said party " of the first part, his heirs or assigns."

The antenuptial deed was also executed by Thomas E. Marshall, the trustee, and contains his covenant, with the trustor, and with all the beneficiaries, " faithfully to per- " form and fulfill the trusts aforesaid, and every part there- " of, according to the true intent and meaning of the " deed." Such covenant is declared to be binding upon the trustee, his heirs, executors, administrators and assigns.

It was duly recorded in Cook County on November 21, 1860. The fire of 1871 having intervened, it was re-recorded April 5, 1877. (470.)

The usual general replication appears to the above answer (29).

THE CROSS-BILL OF APPELLANT (31), embraces the substance of the averments of her answer, and therefore needs not a fuller statement than is given below.

It shows more in detail the course of dealing between the husband of appellant and Messrs. Baird & Bradley, agents of appellee; that in the course of such agency "and "with the authority of said Paxton, said Baird & Brad- "ley, on or about February 13, 1872, as your oratrix is "informed and believes, and so states, agreed for said "Paxton, with said James M. Marshall, to lend said Mar- "shall of the moneys of the said principal the sum of "$5,000, and to extend a previous loan of a like amount "for the term of five years from that day, and to take "from said Marshall his bond for payment of ten thous- "and dollars, payable in five years thereafter, to be se- "cured by a trust deed of said homestead property, to be "executed by said Marshall and your oratrix, according "to the directions and under the supervision of said Pax- "ton, through his said agents, Baird & Bradley;" that such loan of $5,000 so to be extended, fell due on the 13th day of February, 1872, and was secured by a certain deed of trust, purporting to be signed and acknowledged before a notary by said James M. Marshall and your oratrix, but which, as she is informed, was released by said Baird and Paxton, at the instance of said James M. Marshall at or about the time of such extension, which release was without the knowledge or consent of your oratrix, and which deed of trust, although signed, was never acknowledged by her, or in anywise binding as her act and deed. (33.)

WITH REGARD TO THE CIRCUMSTANCES UNDER WHICH SHE WAS INDUCED TO SIGN THE BAIRD TRUST DEED, AP-

PELLANT'S CROSS-BILL shows that under the loan agreement or negotiation between appellee's agents (Baird and Bradley) and her husband, appellee (by his agents) prepared and assumed the duty of preparing and taking the securities relating to appellee's loan to her husband; that appellee employed said James M. Marshall as his agent for the purpose of calling upon your oratrix and obtaining the signature and acknowledgment of your oratrix, at her residence, to said proposed deed of trust as so prepared; that, as was well known to said Paxton and his said agent, your oratrix had no part in or knowledge of said matter and had not in anywise employed said Baird and Bradley or James M. Marshall in relation thereto, or in relation to the preparation or execution of said deed of trust; and in fact was confined at her residence by severe illness, incapacitating her from any business and rendering her unfit and unable to comprehend the meaning of said deed, either of reading or hearing the same read.

The CROSS-BILL further shows that at and before February 12, 1872, appellee and his agents were aware of the trusts of the antenuptial deed of November 21, 1860. [Setting them out substantially as above.]

On information and belief the cross-bill states that THOMAS E. MARSHALL, ON OR ABOUT MAY 18, 1861, made a paper purporting to be a deed to oratrix which bore date on that day "and by some one without the au- "thority or knowledge of your oratrix was recorded in "said Cook county records and purported to convey, as "she is advised, the legal title of said premises to your "oratrix, but your oratrix shows that she had no knowl- "edge of the execution of said purported deed till re- "cently and that she never received the same and that "the same NEVER TOOK EFFECT BY DELIVERY TO YOUR

" ORATRIX; and she submits that it was not competent for " said Thomas E. Marshall so to surrender said trusts, " and that the same are still in force." (36.)

She shows her continued actual residence on the premises, and her ignorance until recently of appellee's claims; that on FEBRUARY 14, 1872, " being confined to her bed " by sickness (38), under the influence to a considerable " extent of medicines prescribed by her physicians, and by " such sickness and medicines incapacitated as aforesaid " from properly understanding any business affair,she was " requested by the said James M. Marshall, acting as " agent aforesaid for said Paxton, to sign the aforesaid " deed of trust to secure said bond of $10,000 so agreed " to be made by said Marshall; that not understanding or " having ability to understand the said deed, which was " and is complicated and prolix and drawn in technical " language, your oratrix before signing it inquired as to " its nature, and was told by her husband that it related " to a piece of land on Prairie avenue (other than said " homestead lot), upon which information and relying " thereon your oratrix signed the deed and dismissed the " matter from her mind; and she shows that had she been " told the real nature of said deed she would have refused " to sign the same."

" And your oratrix is informed and believes and so " avers the fact to be, that immediately after your oratrix " signed said paper or deed, and before 10 o'clock that " day said Paxton, by his agents Baird and Bradley, re- " ceived said deed from said Marshall and disbursed a " large part of said loan of $5,000 to him; that at that time " said deed, as your oratrix is informed and so states, bore " upon it a supposed and pretended certificate of acknowl- " edgment, purporting to show that on that day your

" oratrix had appeared before the notary making it, and " made acknowledgment of such deed, whereas, in fact, your " oratrix had remained sick in bed, and had made no such " *crazy* [or any] acknowledgment of said deed, nor seen " said notary, nor had any information touching said loan " or said deed of trust; (39) and, on information and be- " lief, she says that from the circumstances aforesaid, and " others said Paxton had notice that your oratrix in sign- " ing said deed was not aware of its nature, and supposed " it to relate to said Prairie avenue property, and had " not acknowledged said deed, and would not have signed " it had its real nature been stated to her."

THE CROSS-BILL (40) shows that at all times during her coverture appellant was under the belief, derived from advice of counsel and friends, frequently given her, as well as from her own understanding of said deed, of November 21, 1860, that the Indiana avenue premises were inalienable by her for any purpose whatever, and that her only power over them was that given her in said deed; and that, therefore, " the deed to said Baird is, so far as " your oratrix and her said children are concerned, void " and of no effect, and should be so declared in a court " of equity."

And oratrix " submits that if said deed to said Baird " was not void, as to her, it was, at all events, the duty of " said Paxton and his said agents to see that the proceeds " thereof were applied, according to the aforesaid deed " of November 21, 1860, to the benefit of your oratrix, " which was not done, but said proceeds given to said " James M. Marshall, and that, in that view, it was a " great wrong upon your oratrix and her children, for " which said Paxton and his agents are responsible, to ap- " ply the said proceeds to the debts and for the benefit of

" said James M. Marshall, without your oratrix' knowledge " or consent, which was done; and afterwards to seek to " divest your oratrix and her said children of said property, " and oust them from said homestead, which is now sought " to be done under color of said deed to said Baird." (41.)

She refers (45) to the forcible entry suit, to the claims of appellee, under the Baird trust deed and the foreclosure deed to appellee, and shows that they have operated as a serious cloud upon the title of appellant and her children—that, after an illness of several months, her husband, James M. Marshall, departed this life July 1, 1880.

The cross-bill concludes with a prayer that the Baird trust deed and all right and title of appellee thereunder be, as to appellant, removed as a cloud upon her title, and for injunction and general relief.

September 21, 1880, the ANSWER OF APPELLEE is filed to the above cross-bill (49).

Appellee states that February 13, 1867, he loaned James W. Marshall $5,000 payable in five years thereafter, and took as security therefor a deed of trust from Susan C. Marshall and said James M. Marshall of the premises in question to one Lyman Baird, which trust deed was duly acknowledged by said Susan and James; that when said sum became due said James M. Marshall desired to make a loan from said Paxton of $10,000, to consist of the $5,000 already loaned and an additional sum of $5,000, and thereupon on or about the 13th day of February, 1872, the said Baird executed a release of said trust deed, dated February 13, 1867, and the said Paxton delivered to said James M. Marshall the additional sum of $5,000, which with the sum of $5,000 already loaned, made the sum of $10,000 owing to said Paxton from said James M. Mar-

shall and for which said James M. Marshall executed a bond and coupon interest notes and to secure which the said Susan C. Marshall and James M. Marshall *signed, acknowledged and delivered* a trust deed of said premises to said Baird dated July 13, 1872; that the said Susan C. Marshall knew perfectly well what property was conveyed by said trust deed and for what purpose it was conveyed; that the statement in said cross-bill that she supposed said trust deed of February 13, 1872, conveyed property on Prairie avenue and not the property in question, and that her husband so stated to her, are as the defendant believes a mere pretense gotten up to defraud him of said $10,000.

And this defendant admits that the firm of Baird & Bradley acted as his agents in the above transactions, but denies that (51) the said James M. Marshall acted as his agent in procuring said Susan to sign said trust deeds, or either of them or for any purpose whatever.

The answer denies that on or before February 12, 1872, appellee "knew of the trust deed from James M. Mar-" shall to Thomas E. Marshall, and denies that the said " Susan did not know until recently of the execution of " the deed of said premises from Thomas S. Marshall to " herself; and that the same was never delivered to her; " and appellee (52) denies that from any circumstances " he had notice that said Susan in signing said trust deed " of the 13th of February, 1872, was not aware of its nature, " and supposed it to relate to Prairie avenue property, " and had not acknowledged it, and would not have " signed it had its real nature been stated to her, but, on " the contrary, this defendant avers that he believed " and had every reason to believe that said Susan signed " said trust deed and acknowledged it, knowing per-

" fectly well what property it conveyed and for what pur-
" pose it was given."

THE ANSWER TO THE CROSS-BILL further states (52, 53) " that the deed referred to in said cross-bill or a deed " from Thomas E. Marshall to said Susan C. Marshall, " conveying said premises and dated May 18, 1861, was " a deed from said Thomas E. Marshall, Susan E. Mar-" shall and Ophelia K. Larmon, as grantors, to said Susan " C. Marshall, as grantee, and conveyed to said Susan " C. Marshall the premises in question, *discharged of the* " *trusts set forth in the deed of trust of said premises* " *from said James M. Marshall to Thomas E. Marshall;* " that said deed from said Thomas E. Marshall, Susan " E. Marshall and Ophelia K. Larmon to said Susan " C. Marshall was dated May 18, 1861, was witnessed " by said James M. Marshall, *and was delivered to said* " *Susan C. Marshall on the day of the date thereof*, and " was recorded in the recorder's office of said Cook " county, *by direction of said Susan C. Marshall*, on the " 21st day of May, 1861; that said Thomas E. Marshall, " by deed dated May 25, 1861, and recorded in said " recorder's office July 14, 1866, made a further convey-" ance of said premises to Susan C. Marshall, for the " purpose of correcting a supposed informality in said " deed of May 18, 1861, which said deed of May 25, " 1861, *was delivered to said Susan C. Marshall on the* " *day of the date thereof*."

The defendant (54) admits that at and before the date of the Baird trust deed of February 13, 1872, he knew " that " the premises therein mentioned were occupied by the " family of said James M. Marshall as a homestead."

The ANSWER TO APPELLANT'S CROSS-BILL states (54) that the time of payment of the bond of February 13,

1867, for $5,000 secured by trust deed of the premises of that date, WAS NEVER EXTENDED, but [the bond] was GIVEN UP and a release made of the trust deed given to secure the same ON THE RECEIPT FROM JAMES M. MARSHALL of the $10,000 bond of February 13, 1872, and the trust deed to secure the same ON THE REPRESENTATION OF SAID JAMES M. MARSHALL, that the trust deed last named of February 13, 1872, was duly executed and acknowledged by the said James M. Marshall and Susan C. Marshall and was a valid and subsisting lien on said premises.

It is further admitted (55) that the forcible entry suit " is still on the common law docket of this court."

The replication of appellant to the above answer was filed October 2, 1880.

The court had ordered a REFERENCE TO A MASTER IN CHANCERY on the bill July 10, 1880 (30), at which time leave was given to file the above cross-bill and the death of James M. Marshall suggested upon the record. On October 4, 1880, the master was ordered (62) to take proof and make report " touching the matters in said " cross-bill alleged." May 3, 1882, the master made his report upon bill and cross-bill. It is brief (63 and 64). It is: 1. " That the allegations of the bill are fully sus- " tained by the proof." 2. " That the deed dated Feb- " ruary 13, 1872, purporting to have been signed by " James M. Marshall and Susan C. Marshall, his wife, " was in fact executed, acknowledged and delivered as in " said bill charged, and is a valid and subsisting lien upon " the interest of said Susan C. Marshall in the premises " therein described. I therefore recommend that the " prayer of complainant's bill be granted, and that the

" defendant, Susan C. Marshall, be decreed to deliver to " the said complainant the possession of said premises."

This report was accompanied by the testimony and exhibits taken and produced.

The appellant, on May 15, 1882, filed her EXCEPTIONS to the above report (65). They were:

Exception 1. The master reports that the material allegations of said Paxton's bill have been, when they have not been proved in the evidence in said report, referred to and thereto attached.

Exception 2. The master reports that the deed of trust to said Lyman Baird was, in fact, executed and acknowledged by said Susan C. Marshall and James M. Marshall, when such fact is not alleged in said bill, * and is denied in the answer and cross-bill of Susan C. Marshall, and is not proven in said evidence, but is wholly disproved therein.

Exception 3. For that having found that the deed of trust was so executed and acknowledged by James M. Marshall and wife, and was a valid and legal conveyance, according to its purport and the purport of the certificate of acknowledgment thereto attached, the said master has erred in his said report in recommending to this court that the legal remedy of said Paxton, under his said deed, be enforced in this cause by a decree ejecting said grantor, Susan C. Marshall, from the lands in said deed mentioned; and has further erred in not recommending the dismissal of said Paxton's bill, in accordance with the

* An inadvertence in drawing the exceptions; the bill, as it then stood, states that appellant so " claimed " and appellee offered to allow the benefit of the $1,000 homestead exemption, but his bill contained the allegation already noted, that the deed was acknowledged by husband and wife. The answer to appellant's cross-bill repeats that allegation (50).

rules of this court and the act of Congress in such case provided for want of jurisdiction in this court to hear the same, as it ought to be, on the facts reported by him, if the same be true.

Exception 4. (66.) For that the said master has omitted to make any report as to the facts or law relating to said Susan C. Marshall's cross-bill, and the evidence sustaining the same, although the said matters were referred to him by this court, and are necessary to the proper hearing of this cause; and especially for that said master has omitted to report whether or not it is true, as alleged in said cross-bill, that said Susan C. Marshall was not a party to the loan negotiation in said cross-bill mentioned, and was ignorant of the same until the detainer suit in said cross-bill mentioned; and whether or not said Paxton's agents entrusted said James M. Marshall with the deed of trust as the agent of said Paxton to procure the signature of Susan C. Marshall; and whether or not said Paxton was and is responsible for the misrepresentation, and deceit by which said Susan C. Marshall was induced to sign said deed; and whether or not said Susan C. Marshall was ignorant of the real nature of said deed, and of the nature of said business; and whether or not she was then incapacitated from understanding the nature of said deed, or protecting herself by examining the same to the extent alleged in her cross-bill; and whether or not said deed is in equity binding upon her under the circumstances disclosed in the evidence; and whether or not said deed to Thomas E. Marshall is still in force; and whether or not the supposed deed of February 13, 1872, is void for lack of any power in Susan C. Marshall to make the same; and whether or not said Paxton had actual notice

of said deed of November 21, 1860, and of the lack of power aforesaid, and of the fact that said premises were occupied by Susan C. Marshall as her homestead, and that of her children, under the deed of trust last named; and whether or not it was the duty of said Paxton (if said deed of February 13, 1872, was within the power of said Susan C. Marshall to make) to see to the application of the proceeds for the benefit of the said Susan and not wilfully and without her knowledge and consent to pay them over to said James M. Marshall, with notice that he was using them in his individual capacity; whether or not said Paxton is continuing said detainer proceedings as alleged; whether or not said deed of trust (Baird) should be removed as a cloud as prayed in the cross-bill, and whether or not divers other material allegations in said cross-bill are true as therein stated; prayer for judgment upon said report, and that the cause be recommitted to the master under special directions in that behalf, or that such other order, etc.

July 18, 1883, the APPELLEE AMENDED HIS BILL in the manner above stated as to the acknowledgment (71) and the cause came on to be further heard. On such hearing the court overruled all the exceptions of appellant to the master's report and confirmed such report, "except as to "so much thereof (74) as finds that Susan C. Marshall "acknowledged the trust deed described in the bill of the "complainant, James W. Paxton, as to which part thereof "said exceptions are sustained." The order (75) also appointed three commissioners to appraise the value of the premises, and if the premises could be so divided as to set off so much thereof, including the dwelling house, as in their opinion should be worth $1,000 to the appellant for

a "homestead," and in case the value exceeded $1,000, and the same could not be divided, to make and sign an appraisement and report their proceedings for the further action of the court (76).

The commissioners reported, July 19, 1883 (78), an appraisement of $12,500, and that the premises "cannot, "in their opinion, be divided so as to set off a homestead "of the value of $1,000 to said Susan C. Marshall with- "out injury to the interests of the parties."

July 24, 1883, the cause was further heard and THE FINAL DECREE OF THE COURT ENTERED (79). It recites the report of the commissioners and confirms it. It proceeds, "And it appearing to the court that said James "W. Paxton is entitled to the possession of said premises "and the rents, issues and profits thereof for and during the "natural life of the said Susan C. Marshall upon the pay- "ment into court for the use of the said Susan C. Marshall "the sum of $1,000 for her homestead in said premises. It "is ordered, adjudged and decreed that the said James "W. Paxton, within ten days from the entry of this decree, "pay into court for the use of the said Susan C. Marshall "the sum of $1,000 for her homestead in said premises, "and also pay to the clerk of the court $10 for clerk's "commissions; that the said Susan C. Marshall and all "persons claiming through or under her since the com- "mencement of this suit deliver to the said James W. Pax- "ton within twenty days from the receipt by said Susan C. "Marshal or her solicitor of notice that said sum of $1,000 "has been so paid into court, the possession of said prem- "ises, to wit: lot 12 and the south 12 feet 3½ inches of lot "13 in block 3 in William Jones' Addition to Chicago, in "Cook county, Illinois; and that upon the failure of the said

" Susan C. Marshall to so deliver possession of said " premises the said James W. Paxton have a writ of " assistance therefor. It is further ordered, adjudged and " decreed that the said James W. Paxton pay one-third " of the costs of this proceeding and that Susan C. Mar- " shall pay two-thirds of the same, and that execution " issue therefor respectively; and that the cross-bill of " said Susan C. Marshall be dismissed."

April 18, 1884, Susan C. Marshall, by her present name of Susan C. Knight, appealed to this court and filed her bond (82, 83).

Errors Assigned.

Appellant assigns as error that the Circuit court erred in decreeing any relief whatever on appellee's bill; and again erred in dismissing, as above stated, appellant's bill for want of equity; also that that court erred in overruling the appellant's exceptions to the report of the master; that it erred in not setting aside the Baird trust deed as to appellant, upon one or more of the grounds stated in appellant's answer, and cross-bill, which included lack of power in appellant to convey; misrepresentation to her of its nature and other equities as above; also that the court erred in holding that the appellee's bill, either before or after its amendment, showed on its face a case of equitable cognizance, or any other cause of action than a legal right of entry upon land.

A more specific consideration of these alleged errors will be necessarily involved in the brief to be subjoined. The above abstract will present the questions involved in the appeal, and the mnnner in which they arise.

Susan C. Larmon, then a single woman of about seventeen years of age, was living at Chicago in November, 1860. She was soon to marry, and November 22d of that year did marry James M. Marshall of that city (86a). In contemplation of their marriage, and the day before it took place Mr. Marshall executed to his brother, Thomas E. Marshall, the TRUST DEED OF NOVEMBER 21, 1860, which, as we have seen, was put on record the day of its date. Its contents have been stated, *ante*, p. 9.

The property conveyed to Thomas E. Marshall had been visited and selected by husband and wife before their marriage (87) as the site of their future home. Shortly after the marriage, they built upon it their dwell-

ing; it became the abode of the appellant and her husband. Children, six in number, were there born to them —the eldest being about nineteen years of age at the time the evidence was given in 1880. Their father died there in July, 1880.

In fact, this house and lot, the same covered by the Baird trust deed, remained the homestead of appellant and her family, according to the intents of the antenuptial deed, from about the time of her marriage down to the date of the decree which thrust the family out. Prior to the suit at law in detainer, by appellee, in 1879, no one had, to appellant's knowledge, called in question her right to continue in occupancy during her natural life, protected by the same trusts upon faith of which the marriage had taken place in 1860.

During that period the legislation of the state had been modified by statutes enlarging the capacity of married women in respect to conveyances of their property and in other respects, but the statute book of Illinois had been amended by no law impairing the validity of such trusts as those on which appellant rested her consciousness of safety and peace. This dedication of the property to the uses of the antenuptial deed was, therefore, prompt, public and continuous. The deed itself, spread upon the records as soon as executed, and the possession of appellant under it, made her rights unmistakable as a matter of actual notice to all concerned.

The business of James M. Marshall, from his marriage to his death, was that of real estate agent and dealer in Chicago. He is shown to have been actively engaged in his business, and to have carried it on extensively, both as agent and on his own account. That he needed considerable sums of ready money in his affairs is very evident; that he conceived, at an early day, the plan of facil-

itating the raising of money for his business uses, by the record of such a deed as would be deemed to extinguish the trusts of the antenuptial deed is also evident. He intended to place the property, so far as the records were concerned, in his wife's name, subject to disposition by their joint deed, in the usual way.

He proceeded to the execution of this intention on May 1861. Its accomplishment did not in his view require the consent or knowledge of his wife, and, in fact, she was neither consulted nor notified.

THE DEED OF MAY 18, 1861, was put on record. It was drawn in the handwriting of James M. Marshall, and was signed at his office (230). This is the paper which is pleaded by appellee in his ANSWER TO THE CROSS-BILL, as a conveyance to Susan C. Marshall of the premises "*discharged of the trusts set forth in the deed of trust of* "*said premises from said James M. Marshall to said* "*Thomas E. Marshall.*" (52.)

Thomas E. Marshall and the other signers (Susan E. Marshall and Ophelia K. Larmon), were shown this deed before the master, and their testimony is in the record, together with that of appellant. May 25, 1861, Mr. James M. Marshall procured the signature of his brother to a sort of supplemental deed explanatory of the deed of May 18, 1861. This deed appears in full at page 454.

Upon these two deeds, and the extrinsic testimony, two questions arise for the consideration of the court. 1. Do they, as matter of law, and on the assumption of a valid and actual delivery to the appellant, operate to discharge the trusts of the antenuptial deed? This will be argued hereafter, as a question of title. 2. Were they ever delivered to appellant? It is obvious that a negative reply to either question leaves the trusts of the antenuptial deed in force, so far as these deeds are concerned.

AS TO THE QUESTION OF DELIVERY TO APPELLANT.

THOMAS E. MARSHALL:

This witness (228), the brother of James M. Marshall, was in 1860 a resident of Chicago; a conductor on a city horse railway; he is shown and identifies the deed of May 18, 1860 (Ex. B.); acknowledges his signature; says he: "never read it over at all;" but remembers signing it; he does not know exactly the circumstances (230); says: "I came to his office; my impression is he asked me "to come to the office, or sent to me that he wanted to see "me. I came to the office 97 South Clark street, room "number 8, in old Larmon Block, fronting on Clark street. "When I got there he asked me to sign this paper. I told "him I didn't want to sign anything that would do me any "harm. He said it would not, and I signed it and walked "out—'he' meaning James M. Marshall."

Witness recognizes the handwriting of the deed as that of James M. Marshall; is acquainted with his writing and has seen him write; that is the substance of what took place on that occasion. Witness had two or three words with him about it (231), and signed it and walked off. Witness left the deed with James M. Marshall, "right in "front of him sitting at the desk." Witness thinks his uncle, James Larmon, was present on the opposite side of the room, "but had nothing to do with him"; remembers no other person as present; thinks Mrs. Susan C. Marshall was not present; does not think she was;

Witness left the deed (231) and came away. The witness says he "never did anything with regard to "delivering the deed to anybody; exercised no control over "the deed after that; dropped the subject at that time;

"never read the deed; something about property; I never "read the whole contents; I was in a hurry to get on the "cars again. (232.) He told me it was a deed of a piece "of property something like that. I was then actively "employed by the horse-car company as conductor."

On Cross-Examination.

The witness states: "I have been working on the "North-Western railroad for twelve or thirteen years, "and never was at their (the Marshalls') house very "often; nobody talked with me about this for twenty "years; it was first mentioned to me not a great while "ago; Mrs. Marshall came to me about it; he (James M. "Marshall) folded it (the deed) up and stuck it in his "desk; I left it there for him to do what he saw fit. "(234.) He asked me to sign and I did so; I had an in- "terest so far as his own welfare was concerned. If I "could do him any good I would do it. I felt friendly to "my brother and disposed to do any act of kindness I "could. I didn't have a cent of interest; of course I had "been associated with him more or less ever since I came "here; I went into his office first when I came here, and "collected rents for him (235), and rented houses and "built sidewalks, and doing everything else necessary for "the property he was agent for; of course had no ill-will "against him; if I had I never could have signed it; was "not aware I had any interest or title in the property "described in the deed."

On re-direct the witness states: "I didn't read it because I "had been in the habit of delivering these things around the "city, them great long fixtures of real estate abstracts and "titles. It would take a man half a day to read one. I "didn't suppose it was necessary and he told me; I

" took that on trust (236). I never said a word as to " what should be done with the deed" (237).

On recross-examination the witness adds: " My own " inclination(238) my notion, was to sign it to get it out " of the office. He asked me when I came to the office, " he says to me, ' Tom I want you to sign a paper here " for me—some papers.' Well, says I, what do you " want me to sign those papers for? ' Well,' says he, " they are legal and they are all right and I want you to " sign them.' And I says to him, I don't want to sign " anything that will get me into any trouble and he says, " 'they will not get you into any trouble.' I said then all " right; and signed paper, of course, and left it on the " table and left him with the paper in front of him."

As to the supplemental deed of May 25, 1881, which is found at large in the record (454), the same witness identifies his signature and states (258) that the written part of the deed is in the writing of his brother James M. Marshall—" I could tell that in Jerusalem"—the deed was never in possession of Mrs. James M. Marshall " that I " know of"—all the papers I ever signed I left them right on J. M. Marshall's desk. I had nothing more to do with them. " I delivered no papers to no one." Being asked why he signed the deed on this occasion and the other one (260), he replies: " Why he asked me to sign " them and I done so, that is all." Being asked what communication he had had with Mrs. James M. Marshall on the subject he replies, " I had none." *So far as he knows there has been no delivery of this deed to her.*

On cross-examination he states that the deed of May 25, 1861, was " executed" in the office of James M. Marshall on Clark street at the request of James M. Marshall (261), after witness " executed " it he walked

right out, leaving the deed in the custody of his brother, to do what he was a mind to with it, that was the same concerning the other deed—supposed he had done so—his brother [James M.] never mentioned anything to him [Thomas E.] about it. Saw him [James M.] frequently; witness supposed the deed had been recorded (262), "there was nothing said about it."

Mrs. SUSAN E. WHEELER, who (as Susan E. Marshall) was one of the signers of the deed of May 18, 1861, states that she had resided in Chicago since 1860; was married eighteen years ago last month (252), her husband's name being William E. Wheeler. She is shown the deed above referred to and recognizes her signature; thinks she signed the deed in her brother's office, James M. Marshall's, recognizes the writing of the deed as his; often saw him write; says she did not deliver the deed to Mrs. Marshall; *don't know of any one delivering it;* witness says she don't know what was done with the paper when she signed it: "I signed it and left it and didn't ask "any questions. I don't remember of any one being "present; Susan C. Marshall was not present; have had "no connection with her about signing this paper; didn't "know anything about it until she wanted to know if "that was my signature a few days ago; until that time "I didn't know it was in existence; Mr. Marshall (J. M.) "said nothing at all to me about the contents of the paper; "he asked me if I would sign the paper for him, and he "said he understood it better than I did and I signed it "and asked no questions. He said for me to sign it and "that was sufficient; I did not know what was in the "paper (254). *I left it with James M. Marshall;* I did "not do a word after that by way of communicating to "Mrs. James M. Marshall that I had made this deed

" (255). *So far as I know she did not know of the deed* " *having been made.*"

On cross-examination Mrs. Wheeler states:

" I was willing to sign any deed he (James M. Mar-" shall) asked me to sign without reference to what the " contents were (256); I had confidence in him; there " was no one present that I remember."

Re-direct.

" I know there was no one present but myself; whether " other persons coming in and out of the office or not I " don't know, of course, but no one I knew was present " when I signed it; my brother was older than myself " (257); my actual experience in matters of law business " at that time had been none at all."

Ophelia K. Noble, who (as Ophelia K. Larmon) was the other signer of the deed of May 18, 1861, states, on being shown the paper, that her signature thereto is in her handwriting; that the deed is in the writing of Mr. James M. Marshall (143); *witness never delivered the deed to Mrs. Susan C. Marshall; don't know any* [*thing*] *of such delivery;* have an indistinct recollection of signing a paper at Mr. Marshall's office; never signed any paper for him but once; I don't know what it was; the paper I signed was not explained to me (144); it was not stated that it had any reference to the homestead, 930 Indiana avenue. I had no knowledge when I signed it that it related to the homestead premises, 930 Indiana avenue. I did not read the paper; it was not read to me; I was not made acquainted with its contents. Mr. Marshall wanted me to sign the paper. He said I want you to sign the paper, and I signed it; was in the habit of doing

everything of that kind, and had a great deal of confidence in him; and I never asked him what I signed; didn't know; never had it in my hands, except to sign it (145). Before to-day I had no actual knowledge of having made a deed to Susan C. Marshall of this property in controversy; never had any converation with Mrs. Susan C. Marshall on the subject of this deed to her. I do not know what was done with the deed when I signed it; *I did not take it; I let it alone after that.* Mr. J. M. Marshall's office was then corner of Clark and Washington streets. He had the usual vaults that real estate men have. I do not know that he had such conveniences at his house.

On cross-examination, the witness stated that the paper she signed at the request of James M. Marshall she did not take up (157), did not touch; left it for him to do as he saw fit with it.

SUSAN C. MARSHALL, the appellant, was also examined as to the delivery of the so-called "discharging" deed of May 18, 1861.

She is shown that paper (88), and is asked to state what she knows about it, and when she first had any "knowledge of it; she answers: "I had not any "knowledge of it. I did not know that it was in exist- "ence at all—not until after this trial commenced. I think "I saw it through you [addressing the examining counsel, "George L. Paddock,] the first, or I saw it with the "papers. Q. You think you saw it through me the "first time you saw it? A. Yes, sir; I never saw it "before. Q. And that was when? A. After the trial "commenced. Q. What trial? A. I don't remember "the date. Q. I am asking you what trial you mean?

"A. The old trial. Q. Between what parties? A. "Between myself and Paxton. Q. Do you mean the "forcible detainer that was tried before Judge Blodgett "and a jury? A. Yes, sir. Q. Then you never saw "that deed, as I understand you, until after that suit "began? A. No, sir. Q. *I will ask you whether that "deed was ever delivered to you? A. No, I never heard "of it.*"

(89) The witness states that up to the time of this suit for the possession of this property, her information in regard to the state of the title was, that it was held in trust for her, "under that trust deed to Thomas, and she heard "nothing of any other deed affecting that state of title, in "fact, didn't know there could be one made."

The witness also states that she had no custody or control of the deed [of May 18, 1861], and never claimed any interest or benefit under it. (90.)

SUSAN C. MARSHALL was asked (265): On your former examination, I overlooked a paper purporting to be a quit-claim deed to yourself, and the same paper, which in your presence I have just shown the witness, Thomas E. Marshall (the deed of May 25, 1861). I now exhibit that paper to you and ask you to examine it, and then to say when, for the first time, you saw or had knowledge of the same?

"A. This is the first time I have seen it; to-day.

"Q. *I will ask you whether that deed* * * which "I will refer to as a deed from Thomas E. Marshall to "yourself, recorded in book 351 of deeds, page 200 Cook "county records, *was ever delivered to you?*

"A. *No, sir.*

"Q. When, for the first time, did you hear of such a "quit-claim deed; before or after the present case?

"A. A few days ago, wasn't it, when I was here? "You told me there was a deed. The writing is my "husband's.

"Q. What authority, if any, did you give for the ex- "ecution of this deed by Thomas E. Marshall to your- "self?

"A. None.

"Q. What authority, if any (266), did you give for the "recording of this deed?

"A. None.

"Q. What authority, if any, did you give your "husband, James M. Marshall, to receive a delivery of "this deed, or the other deed that the witness, Thomas "E. Marshall, spoke of?

"A. None.

"Q. What claim, or recognition, if any, have you ever "made of either of these two deeds?

"A. None. I didn't know there was any deeds.

"Q. Where did Mr. Marshall keep his land papers "and important papers and documents during his life- "time (267)?

"A. I supposed he kept them in his safe; he had "a large safe in his office. I never saw any of them.

"Q. Did he keep them in the house?

"A. No, sir; he never kept any of them there."

ON CROSS-EXAMINATION,

The witness stated (268) that she carried on no business of her own during her married life. Her husband supported the family from his earnings. She never attempted to look after her own property interests; left the management of business affairs to her husband, and attended herself to the affairs of the house. Never talked

to Thomas E. Marshall about any business in her life (269); never gave him any directions in regard to the property mentioned in either of these deeds.

"Q. (270) Or as to his being trustee in any way "whatever?

"A. No, sir; but I knew this when I was married; it "was put in trust with Thomas E. Marshall, so I could "do nothing with it—I supposed that was the case.

"Q. Did you ever request Thomas E. Marshall to act "for you?

"A. No; he asked me if I was willing, and I said "yes, and I supposed he was, and so Mr. Marshall could "do nothing with it nor I either; that was what I was "told."

If there is anything in the evidence in conflict with the above testimony of Thomas E. Marshall, Susan E. Wheeler, Ophelia K. Noble and Mrs. Susan C. Marshall, it has escaped the observation of appellant's counsel. Prepared by James M. Marshall, the papers are left, in 1861, in his possession by the signers; he records them without his wife's knowledge; he keeps them at his business office ever since during his life; they are found among his papers after his decease; their existence as a matter of actual notice to appellant does not appear until the present controversy.

APPELLANT'S COUNSEL (314) explains how these papers and the other deeds and papers came into the case. He states "shortly after the commencement of the forcible "detainer suit * * * which was begun to the May "term, 1879, Mr. James M. Marshall called at my office "and spoke to me about appearing for defendants in that "case. Shortly after that he left with me a large pack-"age of documents consisting of an abstract of title and a

"number of deeds and other papers. Among these papers "were the deeds spoken of by the witness Susan C. Mar- "shall, a quit-claim deed from Thomas E. Marshall to "Susan C. Marshall and the other deeds which have been "produced in evidence on behalf of the defendants in this "case. That was the first knowledge I had ever had of "these papers, and the package has been in my custody "and under my control ever since that time to the pres- "ent. I know of no custody of these papers exercised by "Mrs. Marshall (315) except that I have from time to "time made use of them in both the detainer suit and the "present chancery proceedings as her counsel."

On Cross-Examination.

"Q. As I understand you, all of the deeds and papers "which have been produced by Susan C. Marshall or by "you as her counsel in any of the litigations spoken of "concerning these premises were given to you by James "M. Marshall.

"A. Yes, sir; that is my recollection.

"Q. Shortly after the forcible detainer suit?

"A. Yes, sir; and I might add that they were given "to me at this office in this room by Mr. Marshall, com- "ing as I have described."

The present inquiry being appellant's acceptance or non-acceptance of the discharging deed of May, 1861, how do the other papers thus kept and produced by James M. Marshall, bear upon that issue? Speaking of these papers generally, we say they afford no evidence of such acceptance, because there is nothing in any of them nor the attendant circumstances, pointing in any way to the idea of acceptance by appellant of that deed. Specifically and in series, they are:

1. The deed from Joseph N. Barker and wife to "Susan C. Marshall," bearing date March 14, 1862 (499). It is clear from Mr. Barker's testimony, taken with that of appellant (312, 317) that the latter never saw nor heard of this Barker deed until the present litigation, and that her husband prepared and received it without authority from, or notice to her in any way. It was an unnecessary deed, conferring no benefit upon appellant or anybody else, as the grantors had previously conveyed their entire interest to James M. Marshall by a properly drawn and authenticated deed (460). True, there is a slight difference in the acknowledgment of the later deed, in its reference to waiver of the homestead, but as the Barkers had no homestead in the premises, the land being already the homestead of the Marshalls, this change was immaterial.

2. Another was the quit-claim deed from Carter H. Harrison to "Susan C. Marshall," dated January 13, 1863 (472.)

This paper, like the Barker deed, was a transaction wholly between James M. Marshall and Mr. Harrison. Appellant denies all knowledge of it, and there is no evidence that she ever saw the deed or knew of its existence until the present controversy. This Harrison deed appears to have been recorded April 11, 1863, the very day of the record of the N. B. Ives mortgage of April 1, 1863, (474, 490). This fact leads to the inference that it was so recorded as a part of the formalities of that loan. Baird & Bradley were the negotiating agents of that, as they were of each of the other loans obtained by James M. Marshall on the homestead of his wife. (390, etc.) As appellant had nothing to do with the transaction, it is fair to suppose that Baird & Bradley suggested the recording

of the Harrison release in question. It is established in the proof that Messrs. Baird & Bradley and James M. Marshall began with the $1,500 Ives' mortgage in 1863, that course of dealing which resulted in the ruinous $10,000 loan of 1872, in controversy. Messrs. Baird & Bradley frankly admit (430, 431, etc.) that in none of these various loan transactions did they confer with appellant or deem her actual presence necessary. She says the same thing as to her lack of notice, and hence it is all the more certain that she is not mistaken when she denies all knowledge of this merely formal and incidental release by Mr. Harrison of a satisfied mortgage.

3, 4. These are the Ives mortgage of April 1, 1863, (475) and the Paxton trust deed of 1867 (504.) These deeds, together with the Baird trust deed of 1872 in controversy, were both signed by appellant. The last, as unpaid, was remaining in the possession of appellee's agents at the hearing. It had been made the basis of the sale and conveyance to Mr. Paxton by Mr. Baird, and the bill in the present case recites that proceeding; the other two, having been paid and taken up by James M. Marshall, for whose convenience they were made, were kept by him at his office with his bonds or notes therein mentioned, and the release deeds given him at the times of payment. As the loan papers did not require his wife's presence, the releases did not.

There was nothing on the face of any of these deeds and papers that referred in the slightest, either to the antenuptial deed or the so-called discharging deed. Hence, whether read by appellant or signed by her without reading, there was nothing upon or about them to lead her mind to the idea that her trustee had abandoned his trust and conveyed or attempted to convey to her the

trust estate. The far-fetched inference (should it be suggested to this court), that in signing these three mortgages, during the marital influence of her husband, she was accepting the delivery or recognizing the validity of another and prior deed not present before her or called to her attention, should, we respectfully submit, be held rebutted by the wholly uncontradicted evidence of herself and the other witnesses to the effect that she was utterly ignorant of the very existence of such other deed.

As appellant had married upon faith in the existence and continuance of the antenuptial deed, it is not to be supposed, without some tangible evidence, that she would deem it beneficial to her to destroy or discharge that trust. There is no evidence in this case that any one ever came to her to ask her consent to such discharge; there is no evidence that any one ever informed her that her trustee had fled from his post of duty, and made a deed of relinquishment. The evidence given above of the trustee, his sister, Mrs. Wheeler, and that of Mrs. Noble, signers of the pretended discharging deed, brings us to the firm conclusion that James M. Marshall kept the objects of that deed a secret not only from his wife, but even from the signers themselves. The language of the deed in its rude idiom shows James M. Marshall to have been, not the copyist of the deed, but its author. He consulted no adviser as to its form and terms. Probably he felt that to bring in disinterested counsel might lead to a suggestion that nothing be done without the presence and consent of the party chiefly interested—appellant. It is hard to see any other objection in the mind of Mr. Marshall to apprising his wife of his purpose than the impression that notice to her would lead to opposition. Thomas E. Marshall had consulted appellant (270) as to assuming the

duties of the antenuptial trust. He had covenanted upon the deed his acceptance of that trust (470), and had he been informed by his brother that by the discharging deed it was intended the trust should be terminated, it would have been his duty to suspend his action until the consent of appellant had been obtained. The fact stated by Thomas E. Marshall and the two other signers, that James M. Marshall did not permit them to understand the nature of the deed, makes it morally certain that James would not thereafter take any steps to give to the grantee the information withheld from the grantors.

If appellant was willing to become a party grantee to the discharging deed her husband must have been aware of that state of her mind. In that case, it would have been very natural for appellant to have been present, or at least alluded to, in the transaction at James M. Marshall's office in May, 1861. The signers there assembled would upon that basis have been very differently treated and talked to by James M. Marshall. The state of facts shown in proof can only be accounted for by considering that appellant was known by her husband to be blindly relying upon the validity and continuance of the marriage deed, and presumably disposed to resist any proposal to abrogate its trusts. Again, had Marshall resorted to professional advice, such as he must have taken in creating the trust, it is inevitable that something would have been said and done as to the rights of the children of the marriage, one of whom was then legally *in esse*, having been born, as we understand her mother to state (100), October 3, 1861, about four and one-half months after the date of the pretended discharging deed. Since that date the remainder in fee has opened to admit the other and later born issue. But nothing appears to have been

said or proposed, either as to the rights of this unborn child or as to those of the two sisters of appellant. The silence in these respects is broken merely by Mr. J. M. Marshall's curt request, that his brother execute an unknown paper, designed apparently to convey to appellant not a legal estate for her own life, but the legal title in fee. This impossibility is what Mr. Thomas E. Marshall was called upon to effect with a single stroke of his pen while his horse car stood waiting at the door without. In this condition of utter subjection to his brother's will, the only stipulation he seems to have made was for the verbal assurance that he, as the signer of the paper, should come to no harm (230).

That ceremony so conducted is solemnly pleaded by appellee as a relinquishment of the antenuptial trusts, accepted by appellant!

We have seen that the three mortgages of 1863, 1867 and 1872 were parts of a single course of dealing, the subject-matter of which was the borrowing of money by the husband from Messrs. Baird & Bradley. In every instance the loan agents, the security offered and taken, and the notary who furnished the certificate of acknowledgment were the same. In every instance the agents knew that the wife received no part of the funds, and dealt with the husband alone.

If appellant was in reality an intelligent and willing partaker in this course of dealing from the beginning, she would necessarily have remained aware of its nature during the whole time covered, *i. e.*, from 1863 to 1872. If her actual knowledge of its nature began at a later period in its course, it would nevertheless endure to the end, which was the Baird trust deed. Now, on the other hand, if it has been proved, as by several witnesses

it has been proved, that when she signed the last of these mortgages (the Baird trust deed of 1872) she was ignorant that her trustee had conveyed and "discharged" the trust estate, and ignorant that such trust deed covered the homestead lot; that she was then, and ever since her marriage had been, resting under the belief that her homestead had not been and could not be incumbered, such proof forbids the inference that on any of these other and former occasions when she so signed she thereby intended any acceptance of the unknown discharging deed.

We think, therefore, the proof sustains appellant's assertion that the discharging deed never took effect by delivery and acceptance, and forces us to seek some other motive in her signatures to the three loan mortgages than intent to accept or recognize the discharging deed. That other motive—a direct and natural one—is apparent. When a paper was presented by her husband for her signature, she "just signed it" (105).

Her husband, a busy and masterful man, reticent of his plans and methods, was dealing widely in deeds and documents relating to land, and was often in great stress for money. Appellant seems to have conceived of but one limitation upon his power to dispose of land. She believed her home to be safe in her trustee's hands and inalienable by her husband and herself. And such belief on her part was justified by all the facts that had come to her knowledge. So far as she was allowed by others to see, that was the real situation.

It is, therefore, natural and proper to conclude that at all times her mind was free from any purpose of accepting or even recognizing the "discharging deed"; a sense of duty towards her husband was the sole import of her signature of these deeds.

Appellant states that not until the detainer suit did she learn from her husband "how it was" (132).

It cannot be properly urged that appellant's occupancy of the home property was evidence of acceptance or recognition of the discharging deed, since occupancy by appellant and her family was in direct accord with the letter and spirit of the ante-nuptial deed.

In *Hulick* v. *Scovil*, 4 Gilman, 176, a very leading case in our state, an auditor's deed was set up by the defendant in an ejectment, as evidence of outstanding title. The case turned upon its delivery. The deed had been handed by the auditor to a third party, in the grantee's absence. As in the case now at bar, there was no evidence of authority from the grantee to accept the deed.

In laying down the rule governing the question of delivery under such a state of facts, the court enumerates the following as "the concurrent circumstances necessary "to the validity of the deed":

"1st. That the deed be upon its face beneficial to the "grantee.

"2d. That the grantor part entirely with all control "over the deed.

"3d. That the grantor (except in case of an escrow) "accompany delivery by a declaration, intention or intima- "tion that the deed is delivered for and on behalf and for "the use of the grantee.

"4th. That the grantee has eventually accepted the "deed and claimed under it."

Our court also deals with the presumption which has been sometimes held to arise from the *prima facie* beneficial nature of the deed. It says: "From the fact that "the grantee will probably be benefited by accepting the "deed, it may reasonably be presumed that he will do so

" WHEN IT SHALL BE OFFERED TO HIM, OR HE SHALL " BECOME APPRISED OF ITS EXISTENCE. *But until then it* " *certainly cannot be presumed that he has done so. No* " *case has ever gone as far as that.*"

In *Stanley* v. *Valentine*, 79 Ill., 544, the court remarks: " The release never went into the hands of Mrs. Valen- " tine (grantee). She did not know or intend that the re- " lease should be placed on record." It was therefore held that such facts rebutted the presumption which otherwise would have arisen from the recording of the paper.

In *Krebaum* v. *Cordell*, 63 Ill., 23, the deed was placed on record by the grantor without the knowledge of the grantee. Held that the deed was inoperative.

In *Insurance Co.* v. *Campbell* (1880), 98 Ill., 267, the grantee's ignorance of the deed was held to rebut the *prima facie* evidence of delivery from record.

In the celebrated case of *Kingsbury* v. *Burnside et al.*, 58 Ill., 310, the deed of Gen. Buckner and wife to Kingsbury was sent for record from Kentucky to Chicago without the knowledge of Kingsbury, and recorded by one Mitchell, who had no authority from Kingsbury or any one else but the grantors. Kingsbury never had it and never saw it. The court says:

" Was the act of sending it to Mitchell a delivery? " He was a stranger and had no authority from the " grantee to receive it. There was no declaration that it " was delivered to him for the grantee's use; nor was it " delivered as an *escrow*. But it was sent merely to have " it filed for record. * * * The act was no more of " a delivery, in the legal sense, than placing it in the pos- " session of the carrier to be conveyed from Louisville to " Chicago—than if Buckner had taken it himself to Chi-

"cago to be recorded. In *Herbert* v. *Herbert, supra*" (BREESE, 278), "it was expressly held that under the "circumstances of that case the act of recording a deed "cannot amount to a delivery when there does not "appear an assent or knowledge by the grantee of the "act."

Our court found evidence of a subsequent actual notice by the grantor, Buckner, to the grantee, Kingsbury, of the fact of the conveyance and assent by the latter thereto in a conversation between them, and so held the delivery valid. (*Ibid*, 325.)

But the case at bar, as has been seen, is wholly devoid of any such proof of notice and assent, and hence the influence of mere recording is rebutted by the other facts.

I.

THEREFORE WE SAY UPON THE FOREGOING: THE DISCHARGING DEED WAS NEVER DELIVERED AND ACCEPTED IN FACT.

Herbert v. *Herbert*, Breese, 278.
Hulick v. *Scovel*, 4 Gil., 176.
Stanley v. *Valentine*, 79 Ill., 544.
Krebaum v. *Cordell*, 63 Ill., 23.
Ins. Co. v. *Campbell*, 98 Ill., 267.
Kingsbury v. *Burnside*, 58 Ill., 310.

II.

BUT, IN LAW, THE TRUSTEE HAD NO RIGHT TO CONVEY TO HIS CESTUI QUE TRUST IN RELINQUISHMENT OR "DISCHARGE" OF THE EXPRESS TRUSTS OF THE ANTE-NUPTIAL DEED, NOR HAD THE CESTUI QUI TRUST POWER TO RECEIVE SUCH CONVEYANCE AND GRANT SUCH DISCHARGE.

Hence the discharging deed was void upon its face, and could gain no force by actual acceptance if accepted.

Swift v. *Castle* (1859), 23 Ill., 209.
2 Perry on Trusts (2 Ed.), p. 557, § 921.
Parker v. *Converse*, 5 Gray, 336.
Breit et al v. *Yeaton et al.* (1882), 101 Ill., 242.

III.

THE CIRCUIT COURT ERRED IN APPLYING THE STATUTE OF ILLINOIS OF 1869 TO GIVE EFFECT TO THE BAIRD TRUST DEED OF FEBRUARY 13, 1872. THE POWERS OF APPELLANT OVER THE PROPERTY WERE DEFINED BY THE ANTE-NUPTIAL DEED OF 1860; ALL POWERS NOT THEREIN INCLUDED WERE EXCLUDED. THE POWER TO CONVEY THE PROPERTY TO SECURE HER HUSBAND'S CREDITORS WAS NOT INCLUDED, AND WAS THEREFORE EXCLUDED. STATUTES ENLARGING THE CAPACITY OF MARRIED WOMEN TO CONVEY THEIR PROPERTY—E. G., THAT OF 1869—DO NOT AFFECT THE QUESTION.

Decision of Chancellor Kent in *M. E. Church* v. *Jaques*, 3 Johns. Chy., 77.
Swift v. *Castle*, *supra*, 23 Ill., 209.
Breit v *Yeaton*, *supra*, 101 Ill., 242.

And see the following Illinois statutes as to conveyances by married women:

R. S. 1845, Conveyances, § 17.
Homestead Law of 1851, Amendment of 1857.
Laws of 1857, p. 119.
Laws of 1861, p. 163 (Married Women's Act).
Laws of 1869, p. 359, Amending Conveyance Act.

IV.

GIVEN AN ESTATE OR PROPERTY IN APPELLANT WHICH, UNDER THE ACT OF 1869, OR ANY OTHER STATUTE, SHE WAS EMPOWERED TO CONVEY BY THE BAIRD TRUST DEED, THE COURT ERRED IN NOT HOLDING THAT DEED VOID UPON THE EVIDENCE FOR REASON OF THE MISREPRESENTATION AND IMPROPER INFLUENCE BY WHICH SHE WAS INDUCED TO EXECUTE IT.

Bank v. *Copeland and wife* (1862), 18 Md., 305.

Bridge Co. v. *Baker* (1874), 75 Ill., 139.

V.

THE CIRCUIT COURT HAD NO JURISDICTION OF APPELLEE'S BILL, AS THE BILL SHOWED A LEGAL RIGHT OF ENTRY IN A COMPLAINANT OUT OF POSSESSION, AND THEREFORE ENTITLED TO SUE AT LAW—AS HE WAS SUING ON THE LAW SIDE OF THE SAME COURT.

R. S. U. S., § 723.

VI.

THE COURT ERRED IN NOT ENTERING A DECREE FOR FULL RELIEF IN FAVOR OF APPELLANT ON HER CROSS-BILL, UNDER THE FACTS IN EVIDENCE.

The II and III points above, relating as they do to the legal effect of the antenuptial deed and to the disposal of

the trust fund in violation of its trusts, may conveniently be considered together. The power of the husband to influence the wife, in this class of cases, as in others, depends upon facts of sex and physiology, which are permanent. These physiological disparities are not removable by legislation; certainly not by legislation like that of the act of 1869, making simpler the formalities attending the conveyance by married women of their real estate. The statute law of Illinois contains no provision forbidding the owner of land contemplating marriage from conveying it to a trustee to be held in fee simple upon such trusts and subject to such powers of appointment as he may see fit to create. We assume as self-evident that such a deed would vest and establish the rights of all parties mentioned in it, and that while a subsequent statute like that of 1869 might enlarge or modify the means whereby a party to such deed could dispose of the interest acquired, the interest itself conveyed by the deed would remain the same. The effect of the statute of 1869 was practically to dispense with the necessity of a separate examination of the married woman, and the acknowledgment required by the former statute, as necessary to pass her property in real estate. That is to say, the conveyance of a married woman under that act takes effect by delivery. But there is nothing in the act itself which will bear the construction that the statute changes the nature of the property where that property had vested prior to its passage. Indeed, it cannot be conceived that such a change would be within the power of the legislature, even if upon a view of the statute a retrospective construction could be given to its language.

As we understand the rule of property laid down by the Supreme court of Illinois in antenuptial trusts of the

class under discussion, the wife, where she exercises a power of disposition, must act as the attorney in fact of the settler. If the deed of settlement prescribes a mode of action any other mode is forbidden. If it prescribes the purposes for which the action is to be taken, any other purpose is unlawful and void. It results from these general principles that the measure of the married woman's power in these cases is not the will of the legislature, but the will of the owner and grantor of the land conveyed. It is not the question what the legislature may do with regard to enlarging the power of the wife over her own land, but what it may do and has done as to enlarging powers granted to her by a third party. As to these the contract governs and it is not affected by subsequent legislation. Here, as we submit, is the point at which the inquiry should begin, so far as the laws of Illinois are concerned. It is a mere confusion of ideas, therefore, to fail to distinguish between the wife's property and her power over the property of another.

In the creation of these marital trusts in a third party, it has sometimes been the will of the grantor, as in *Breit et al.* v. *Yeaton*, *supra*, to protect the wife by the requirement that witnesses shall attest the deed whereby she is to dispose of the trust estate; at other times, as in *Swift* v. *Castle*, *supra*, the grantor by a deed of settlement has fixed in his own mind an exclusive purpose to which the property is to be devoted. It is to the latter class that the antenuptial trust deed to Thomas E. Marshall in this case belongs. But whether the limitation bear upon the formalities attending the conveyance or whether it bear upon the selection of the purpose for which the estate is to be exclusively devoted, it is deemed by our courts substantial and of the essence of the con-

veyance. It is obvious from the nature of the subject, that the separate examination of the wife by the magistrate; her written request or consent to the disposition; the calling of witnesses to stand by her when she parts with her interests; or whatever the preliminary may be, is designed by the grantor to preserve the estate for the intended purpose against the risk of the husband's undue influence. The laying down of a condition in the deed that the fund is to be used exclusively for the benefit of the wife, or for the support of herself and children, as was done here, is a requirement having the same object in view. The statutory simplification of methods of conveyance of their real estate by married women is, therefore, no reason for breaking down the principle which underlies the mode of administering these antenuptial trusts. It is rather a reason for upholding them wherever the settlement or deed shows upon its face a purpose of limiting the methods and objects of disposal of the property, as a means of protection from the influence of the husband.

The Illinois rule on this question grows out of the adoption by our Supreme court in a carefully considered opinion of the decision of Chancellor Kent in the case of *M. E. Church* v. *Jaques*, 3 Johns. Chy., 77. Our court was not unmindful that this decision of the great chancellor had been reversed by the Court of Errors, but this, it asserts, "does not militate against the reasoning of the "chancellor."

What that reasoning was appears by the following extract:

"The doctrine runs through all the cases," says Chancellor Kent, "that the intention of the settlement is to "govern and that it must be collected from the terms of

" the instrument. When it says she may appoint by will " it does not mean that she may likewise appoint by deed; " when it permits her to appoint by deed it cannot mean " that giving a bond, or note, or parol promise, without " reference to the property, or making a parol gift, is such " an appointment. So, when it says that she is to receive " from her trustee the income of the property as it from " time to time may grow due, it does not mean that she " may by anticipation dispose at once of all that income. " Such a latitude of construction is not only unauthorized " by the terms but it defeats the policy of the settlement " by withdrawing from the wife the protection it intended " to give her. Perhaps we may say that if the instru- " ment be silent as to the mode of exercising the power " of appointment or disposition, it intended to leave it at " large to the discretion and necessities of the wife; *and* " *this is the most that can be inferred.*"

Swift et al. v. *Castle et al.* was decided by our Supreme court in 1859, 23 Ill., 209. The bill in that case was brought by the wife to set aside mortgages of real estate made by herself, joined with her husband, Edward H. Castle and one Filkins; the last being her trustee under an antenuptial trust deed. The mortgages were acknowledged in proper form under the statute of the state, R. S. 1845, § 17, Conveyances; *post.* This antenuptial deed provided that the trustee should, from time to time, collect the rents of the real estate conveyed, and pay them to the wife on her sole receipt *free from the control of any person whomsoever.* It also authorized the trustee to sell and convey the trust estate with the consent of the wife, expressed in writing, AND INVEST THE PROCEEDS IN OTHER ESTATE OR DELIVER THEM TO THE WIFE ACCORDING TO HER WRITTEN DIRECTION. THE DEED CONTAINED NO

EXPRESS PROHIBITION AGAINST DISPOSITION BY THE WIFE IN OTHER MODES. It was held by our Supreme court, after a review of the English and American authorities, that a married woman can convey her antenuptial trust property only in the manner authorized and FOR THE PURPOSES SPECIFIED in the instrument creating the trust, if it contain any such provision, otherwise she may dispose of it without restraint either as to manner or purpose. Upon this rule the court decided that the mortgages having been executed for a purpose foreign to the trusts, viz: to *secure the creditors of the husband*, were unauthorized by the trust deed and would be set aside in equity as void.

Our court also held that the statute of Illinois, authorizing married women to sell their real estate by joining with their husbands in a deed, did not authorize a sale of the married woman's trust estate contrary to the terms of the trust, nor enlarge the powers delegated to the wife by the instrument creating the trust.

The statute referred to is R. S. Ill., 1845, p. 106, § 17.

The section is as follows:

"SECTION 17. When any husband and wife residing "in this state, shall wish to convey the real estate of the "wife, it shall and may be lawful for the said husband "and wife, she being above the age of eighteen years, to "execute any grant, bargain, sale, lease, release, feoff-"ment, deed, conveyance or assurance, in law whatso-"ever, for the conveying of such lands, tenements and "hereditaments; and if, after the executing thereof, such "wife shall appear before some judge or other officer, "authorized by this chapter to take acknowledgment, to "whom she is known, or proved by a credible witness,' etc. (Acknowledgment clause.)

The COURT: "It is urged as a ground for setting aside

"the trust deeds executed to Swift by the trustee, the "*cestui que trust* and her husband, that they were un- "authorized, and not legally binding upon the *cestui que* "*trust*. The question whether a *femme covert cestui que* "*trust* may dispose of her beneficial interest in the trust "property by appointment in all cases where she is not "in terms restrained from doing so by the instrument "creating the trust, has undergone much discussion by "the various courts of this country and of Great Britain; "and upon an examination of the adjudged cases they are "found to be inharmonious and conflicting; one portion of "them holding that a *femme covert* may exercise all the "powers of a *femme sole* in alienating her separate prop- "erty unless restrained by the express language of the "instrument creating the trust, while another and much "the larger class hold that by her marriage she loses all "power to contract in her own right, and that she and "the husband by that relation become one person in law, "and that her legal existence is merged in his so long as "coverture exists, and that she can perform no legal or "binding act in reference to her separate property, but "such as is authorized by the instrument creating the "trust."

Our Supreme court at the close of its review: "From "these various cases, it is manifest to our minds that the "weight of authority clearly is that a married woman can "only convey her trust property in the manner authorized "*and for the purposes specified* in the instrument creating "the trust, if it contain any such provisions; otherwise "she may dispose of it without restraint either as to "manner or purpose."

The court finds the source of this power of the *femme covert* in the law of agency; for it says: "This power de-

"pends upon another well recognized principle; that a "*femme covert* may be appointed and act as an attorney "in fact. When the instrument creating the trust confers "upon her a power to sell or dispose of the trust estate, "she, for the purpose of executing the trust, is an attor- "ney in fact; and all her acts to be legal, must, as those "of any other attorney in fact, strictly conform to the "power delegated, and any deviation from its provisions "will render the act void for want of authority. No rea- "son is perceived why a court of equity should confer "upon her additional powers to those contained in the "instrument creating the trust more than it should upon "any other attorney in fact. To permit her to exercise "such additional powers is only authorizing her to defeat "the object of the trust and to disregard the intention of "the parties which should control in this as in all other "contracts when it can be ascertained from the instrument. "It likewise leaves her *under the influence of the husband* "when in a large majority of cases the trust is created to "prevent his exercising any control over the property. But "few women have the resolution to resist the influence of "the husband so as to prevent him from getting the prop- "erty by her appointment and especially so when pressed "by creditors who are aware that she has the power to "appropriate it to the discharge of his indebtedness. "There would be constant inducements for him to resort "to persuasion, coercion and other means to convert the "property to his own use, and to withdraw the means "appropriated to secure a support to her and her children "from its object. Nor is any reason perceived why a "rule of construction should be departed from in this "class of cases which is applied to others, which is: 'The "expression of one thing is the exclusion of another.'

"When the instrument creating the trust provides that it "may be disposed of by one mode *it excludes all others*, and "when it provides that it or its proceeds may be appro- "priated to one purpose *all other purposes are thereby* "*excluded*. Then why, after declaring a particular mode "or object, hold that any *other mode, and all other objects* "are embraced unless they are prohibited by express "language? It appears to us that the true rule is that "the *cestui que trust* should be restrained to the acts "authorized by the declaration of trust, and that all "beyond the power thus delegated should be held to be "void. This is, we think, more consonant with legal "principles, and fully comports with justice and sound "policy and is sustained by weight of authority."

Referring to the deed of settlement in that case, the court continues: "The deed of settlement neither ex- "pressly nor by implication authorizes the property to be "sold, mortgaged, or in any manner pledged *for the pay-* "*ment of the debts of her husband*, nor does it give her "the unlimited control of the property, but gives her the "power to consent to its sale, and, when sold, to direct "the proceeds to be invested in other property or to be "paid to her. * * * By these trust deeds for the "benefit of Castle's creditors, the objects of the trust "would be defeated, as it is not done for investment "or to reduce the fund to money to be paid to Mrs. Cas- "tle, but it was to pay her husband's debts. These con- "veyances produce no money to be used and applied to "the objects of the settlement, nor was it intended that "they should. This was prohibited by the deed, as it "was not within the objects named, and all other pur- "poses are expressly prohibited." * * *

As to the statutory power of disposition the court proceeds:

"A fair interpretation of our statute authorizing married women to sell their real estate by joining with their husbands in a deed of conveyance does not authorize the sale of trust property *contrary to the terms of the trust*, nor does it enlarge the powers delegated to her by the instrument by which the trust is created. It may confer upon her the power of sale of trust property conveyed or devised for her use when the instrument by which she takes the beneficial interest in the property *is silent as to the mode of its disposition.*"

It is a well recognized principle that when the "conditions of a trust deed have not been complied with in a sale by the trustee, a court of equity will set the conveyance aside, nor can the interests of the *cestui que trust* be impaired by a conveyance of the trustee to a third party for another and different trust from those declared by the deed under which he holds. And when the purchaser is affected with notice of the facts which in law constitute the breach of trust, the sale is void as to him." Citing *Wormley* v. *Wormley*, 8 Wheat., 421; *Bank* v. *Seaton*, 1 Pet., 299, and other cases. "The creditors of Castle were chargeable with notice, they were dealing with a trust fund which they knew to be such, and it was their duty to know the powers of the trustee and the *cestui que trust* over it. The deed under which they claim describes Filkins as Mrs. Castle's trustee, and this is evidence of notice that they were dealing with a trust fund, and they either knew of the terms of the trust, or should have known, and were bound to conform their acts to its terms. They had no right to give credit to

" the husband on the faith that the trust fund would ever " be liable for its payment, and having acted in violation " of the terms of the trust and with notice, they have no " right in equity to hold the property thus obtained. For " these reasons," adds the court, " we are of opinion that " these trust deeds are inoperative and void, and the " complainant and her trustee are not bound by them. " The opinion of the Circuit court is affirmed."

We desire the court to note that in *Swift* v. *Castle* the mortgage of the wife in favor of her husband's creditors was held to be void, not for lack of conformity to methods, but for the reason that the purpose to which the money was to be applied was FOREIGN TO THE PURPOSES of the antenuptial deed. It is therefore a case in point on this appeal, as the purpose of the Baird trust deed of February 13, 1872, was not to raise money for the support of appellant and her family, nor for any other included trust purpose, but to enable her husband to raise money for his business of dealer in real estate, a purpose in the very teeth of all the powers expressed in the antenuptial deed to Thomas E. Marshall. That deed (*ante*, p. 10) devotes the rents and income to appellant's use, " so " that the same shall not be in the power or liable to the " debts, control or engagements of any future husband of " the said Susan C. Marshall," etc. Of this gross misappropriation of the trust funds appellee had the fullest notice, in the nature of things. The counsel who prepared the antenuptial deed to Thomas E. Marshall had before him the rule of property laid down shortly before in *Swift* v. *Castle*. That rule having been settled in Illinois as a rule of alienation of real property, will, we take it, on well known principles, be the rule of decision in this court.

It follows that when the grantor in the antenuptial deed gave to his wife the above enumerated powers he excluded all others, and when he made the purpose for which the trustee was to hold the land the use and support of his wife as a home as above, he excluded every other purpose.

It follows, also, that the statute of Illinois authorizing a married woman to convey her real estate by joining her husband in a deed did not give appellant any right either to convey an estate in the trust property or make an appointment of it for the use of the husband and his creditors.

In 1861 another statute was passed. It went into effect some months after the date of the antenuptial deed in controversy.

The act, laws 1861, page 143, reads as follows:

An act to protect married women in their separate property, in force April 24, 1861.

Section 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That all the property, both real and personal, belonging to any married woman, as her sole and separate property, or which any woman hereafter married owns at the time of her marriage, or which any married woman, during coverture, acquires, in good faith, from any person, other than her husband, by descent, devise or otherwise, together with all the rents, issues, increase and profits thereof, shall, notwithstanding her marriage, be and remain, during coverture, her sole and separate property, under her sole control, and be held, owned, possessed and enjoyed by her the same as though she was sole and unmarried; and shall not be subject to the disposal, control or interference of her husband, and shall be exempt

from execution or attachment for the debts of her husband.

Approved February 21, 1861.

The act of 1869, above referred to, is thus:

An act to amend chapter twenty-four of the revised statutes, entitled "Conveyances." In force March 27, 1869.

Section 1. Be it enacted by the people of the State of Illinois, represen'ed in the General Assembly, That any *femme covert*, being above the age of eighteen years, joining with her husband in the execution of any deed, mortgage, conveyance, power of attorney or other writing of or relating to the sale, conveyance or other disposition of lands or real estate, as aforesaid, shall be bound and concluded by the same, in respect to her right, title, claim, interest or dower in such estate, as if she were sole and of full age as aforesaid; and the acknowledgment or proof of such deed, mortgage, conveyance, power of attorney or other writing, may be the same as if she were sole.

2. This act to be in force from and after its passage.

Approved March 27, 1869.

This act differs from that of 1845, *ante*, in not requiring acknowledgment. But both gave upon the conditions respectively stated a *legal capacity* to the wife to convey her property.

We suppose that the learned judge by whom the decree appealed from was entered must have held, under this act of 1869, that appellant, in joining with her husband in the execution of the Baird trust deed of February 13, 187-, was "bound and concluded by the same," with respect to all her rights under the antenuptial trust deed.

We understand, because the decree so finds, that the

court held that appellant had never had an examination by the notary, and made acknowledgment of the Baird trust deed, but that the deed was sufficiently proved without acknowledgment, and therefore binding under that statute upon delivery. By the provisions of the Homestead Act, however, the court held appellant entitled to an allowance of $1,000, as provided in the decree. The act amending the original homestead exemption, homestead laws of Illinois of 1851, in force February 17, 1857 (Laws of 1857, page 119), reads as follows:

"An act to amend 'An act to exempt homesteads from "sale on execution.'

"SECTION 1. Be it enacted by the People of the State "of Illinois, represented in the General Assembly, that "the first section of 'An act to exempt homesteads from "sale on execution,' approved February 11, 1851, be "amended by inserting after the words, 'subscribed by "such householder,' the words, 'and his wife, if he have "one,' it being the object of this act to require, in all "cases, the signature AND ACKNOWLEDGMENT OF THE "WIFE as conditions to the alienation of the homestead.

"SEC. 2. This act to be in force from and after its "passage. Approved February 17, 1857."

In *Barnes* v. *Sherman*, 74 Ill., 402, (1874), the statute of 1869 is construed to authorize the execution by the wife and husband of a trust deed with power of sale on the land of the wife. We judge the wife to have been seized in fee simple, as there is no mention of any trustee, and as it appears that she and her husband conveyed the property to the appellant. Now, there was no question before the court in *Barnes* v. *Ehrman* as to the wife's power over estates whereof the legal title stood in a trustee for her benefit. It is not, therefore, intimated in that case, nor in

any other Illinois authority, so far as we are aware, that the act of 1869 operated to confer on the wife larger powers of disposition under a marriage settlement trust than previously belonged to her under the deed creating her rights.

But the unacknowledged deed of the wife's estate under the act of 1869, was no more potent than the acknowledged deed under the act of 1845.

The Supreme court in *Swift* v. *Castle* held that a fair interpretation of the act of 1845 "did not authorize the "sale of trust property contrary to the terms of the trust." If so, why should it be a "fair interpretation" of the act of 1869 to hold it authorized a sale of trust property contrary to the terms of the trust? In the Swift-Castle case, as we have observed, the court "held that to permit the "wife, under the act of 1845, to exercise powers additional "to those of the trust deed would be to defeat the object "of the trust and disregard the intention of the parties." Can any one say why it would not equally defeat the intention of the parties to allow her to do so by means of an unacknowledged deed passing by mere delivery? It is not the form of the deed that is here in question; it is the result—the object to be accomplished. We are not, therefore, objecting to the enlargement of the capacity of married women under emancipation acts like those of 1845, 1861 and 1869. These acts concern their *status* as persons. What we are objecting to is a breach of the trusts of the deed to Thomas E. Marshall. That concerns the married woman as a purchaser, or donee of a power.

In the *Swift-Castle* case the court said of the statute of 1845, which required joinder with the husband and acknowledgment: "Nor does it enlarge the powers del-"egated to her by the instrument." Then why should a

statute "enlarge the power delegated to her," which, like that of 1869, requires such joinder without acknowledgment? On this question of enlargement the distinction between the two statutes is one without a difference.

The case of *Life Insurance Company* v. *Spaids*, decided by our Supreme court in 1881, 99 Ill., 249, although not one of antenuptial trust is instructive upon the question of diversion of trust funds and notice to the lender of such diversion. It was a case where the borrower and mortgagor was trustee for his children and held the land in question in trust, among other purposes, to borrow money upon it for the removal of prior incumbrances. In fact, the trustee made the mortgage in question to the insurance company and applied the proceeds to his own business purposes. Our court says:

"Appellant had notice of the terms of this trust. The "deed was left with its agent when application for the "loan was made, and the existence of the trust was ex- "pressly acknowledged by it in the instrument of the 20th "of October, 1871, and having such notice, ample as it "knew the discretion invested in Spaids to be, it had "notice that he had not right to mortgage or sell the "property for the purpose of using the proceeds in his own "business. Did it have notice that such was the object "of Spaids in effecting this loan?"

The rule laid down in *Swift* v. *Castle*, *supra*, though frequently referred to, has never been shaken, so far as we are aware, by any subsequent decision in our courts.

In *Marston* v. *Brittenham*, decided in 1875, 76 Ill., 617, as in *Cookson* v. *Toole*, 59 Ill., 515 (1871), it is evident that the Supreme court had before it the case of *Swift* v. *Castle*, for it is remarked that the questions decided by the court in that case were not involved in the case then before it.

The case of *Breit et al.* v. *Yeaton et al.*, decided by our Supreme court in 1882, 101 Ill.. 242, was like that at bar, a case arising under an an antenuptial deed. It also involved the effect of a married woman's deed under the statute of 1861. The antenuptial settlement, dated October 27, 1849, was between William C. Yeaton of the first part, Mary Frances Du Val of the second part and Southgate and Cowdery the trustees, of the third part. The deed (in contemplation of a marriage between William C. and Mary Frances) granted to Southgate and Cowdery certain bank stocks of Mary Frances in trust for her and her assigns until marriage, then to pay to William C. Yeaton, during the joint lives of William C. and Mary Frances, all interest or dividends of said stocks to his own use; and after the decease of such of them the said William C. and Mary Frances, as should first die, upon trust, to assign the stocks to Mary Frances in case of her survivorship of said William C., but if she died before him, then unto such persons and at the time and times and in such manner and form, part and proportion, as said Mary Frances should, from time to time, by any writing under her hand and seal, *attested by three or more credible witnesses*, or by her last will and testament in writing in the presence of a like number of witness, direct, limit or appoint, etc.

The contemplated marriage shortly afterwards occurred, and William C. and Mary Frances, November 15, 1881, filed a bill in the Circuit court of Alexandria county, Virginia, against the trustees Southgate and Cowdery for the purpose of obtaining a decree allowing the conversion of the stocks for reinvestment upon the same trusts as those contained in the antenuptial deed. The Virginia court entered its decree allowing such con-

version and reinvestment. Under the authority of this decree, on the 16th of November, 1864, William C. Yeaton executed a deed reciting the decree, the sale of the stock and the direction by Mary Frances that a portion of the proceeds should be reinvested in the real estate thereinafter described; the deed then, in consideration of money arising from the sale of the stocks, conveyed certain land in Cook county, Illinois, to Cowdery, as surviving trustee, to hold upon the same trusts as those on which the stocks had been held.

Afterwards, November 6, 1868, a deed was executed between Mary Frances Yeaton of the first part, Cowdery, surviving trustee, party of the second part, and William C. Yeaton, the husband, party of the third part. This deed, in consideration of five dollars and upon a recital that it was executed "at the written request of said "party of the first part" conveyed the Cook county land aforesaid to William C. Yeaton, the husband, his heirs and assigns forever. Mary Frances Yeaton died intestate July 15, 1871, leaving her surviving her husband and the complainants J. Southgate Yeaton and others, her children and heirs at law all issue of the marriage between her and the said William C. The prayer of the bill on behalf of the complainants, as heirs at law of their mother, Mary Frances, was for a reconveyance by William C. Yeaton and the other defendants claiming under him of the Cook county land, and for partition thereof. The case turned upon the effect to be given to the deed of November 6, 1868, by Mary Frances and her trustee to William C. Yeaton, her husband.

Our court says: "In *Swift et al.* v. *Castle*, 23 Ill., 209, "it was held a married woman can only convey her trust "property (as a married settlement) in the manner

"authorized and for the purposes specified in the deed "creating the trust, *and the same rule obviously must ap-* "*ply to the exercise by her of a power of appointment un-* "*der articles of marriage settlement.*" After quoting from the language of the court in the case of *Swift* v. *Castle*, and citing other authorities, the opinion proceeds: "The "point, however, is made that our married woman's act "of 1861 confers upon married women power to own and "control property as if sole, and, therefore, Mrs. Yeaton "might exercise her power of appointment without re- "gard to the restrictions and limitations in the settlement. "This, we think, is entirely a misapprehension. That act "affects only the separate estates of married women de- "rived in the mode provided in the act. IT HAS NOTHING "WHATEVER TO DO WITH THE EXERCISE OF POWERS BY "HER. WE ARE UNABLE TO PERCEIVE WHY THE RESTRIC- "TIONS HERE, IF THE POWER HAD EVEN BEEN GIVEN TO BE "EXERCISED BY A *femme sole*, WOULD NOT HAVE BEEN "BINDING. As owner Mrs. Yeaton, before marriage, "might place such restrictions not forbidden by or con- "trary to the policy of the law, upon the future alien- "ation or disposition of her property as she saw fit; and "it cannot be pretended that these restrictions are, in any "degree, forbidden or contrary to the policy of the law."

"Under our law, prior to the act of 1861, a married "woman could not alienate her real estate, except by "strictly pursuing the mode prescribed by statute, the "right being purely statutory. (*Moulton et ux.* v. *Hurd*, "20 Ill., 137.) And since the passage of that act, and "prior to the amendment of 1874, a married woman could "not convey her separate estate, acquired pursuant to the "provisions of that act, unless her husband joined in the "deed of conveyance. *Cookson* v. *Toole*, 59 Ill., 521;

"*Bressler* v. *Kent*, 61 *id.*, 426; *Elder* v. *Jones*, 85 *id.*,
"384; *Brooks* v. *Kearns*, 86 *id.*, 547. Nor would a court
"of equity, however clear the proof, reform such a deed
"by correcting a mistake in the certificate of the acknow-
"ledgment thereof, and this, because, as was said in
"*Lindley* v. *Smith et al.*, 58 Ill., 250, 'conveyances by
"married women for the transfer of their real estate or
"dower interest, do not take effect by delivery, as other
"deeds, but only by being acknowledged in the statutory
"mode,' and that 'an acknowledgment not in the mode
"prescribed must render the deed useless as a conveyance
"of title.' See *Moulton et ux.* v. *Hurd*, *Lindley* v. *Smith*,
"*supra*; *Hutchings* v. *Huggins*, 59 Ill., 29; *Board of*
"*Trustees* v. *Davison*, 65 *id.*, 124; *Rogers* v. *Higgins et*
"*al.*, 48 *id.*, 211. And inasmuch as it was only by enab-
"ling laws that a married woman could convey her real
"property, and the statute made it imperative that, to do
"so, she must join with her husband, a deed of convey-
"ance by her to him, was absolutely void. *Brooks* v.
"*Kearns*, *supra*.

"So it results, necessarily, the deed by Cowdery and
"Mrs. Yeaton to Yeaton, treated as an attempted con-
"veyance of her property, was absolutely void. Treated
"as an execution of the power of appointment, it was void
"because not attested by three or more credible witnesses,
"as required by the articles of settlement."

In the case of *Breit* v. *Yeaton*, the attempt by the deed of the wife and her trustee Cowdery to William C. Yeaton was held void for lack of conformity to the power reserved in the deed of trust. It was not held void, as we understand the case, for the reason that the purpose, namely that of benefiting the husband, was not within the power, for it was within it, provided the deed had

conformed to the prescribed mode of the exercise of the power. Yet all the authorities hold, in view of the policy of the law upon the subject of marital trusts that the form of the exercise of the power by the woman is always of the substance of the transaction. It is by bringing in witnesses and by interposing conditions, which in ordinary cases might be deemed purely formal and technical, and subject to waiver, that the donors of the power protect the woman from undue influences and effectuate the objects of the trust. But in the earlier case of *Swift* v. *Castle*, we find a deed executed by the trustee, the husband and the wife, which taken as a deed simply, is in conformity to the power conferred by the antenuptial conveyance in that case. Why then did the Supreme court of Illinois cause the creditors of the husband to make restitution and relieve the wife from the consequences of a conveyance which complied with the statutes of Illinois with regard to the capacity of married women to convey their estates. This is a serious question, for it goes to the root of the decree of which we complain before this court. Appellant found herself and her children deprived of the trust property because the court decided that the form of the deed was in accordance with the requirements of the act of 1869. The argument must have been: this is her property, her lands, her real estate. She is a *femme covert*, above the age of eighteen years, she joins with her husband in the execution of the deed, and she is concluded as if she were sole. But the Supreme court in the analogous case of *Swift* v. *Castle*, disregarded this literal and technical conformity to a statute and held such statutes irrelevant; that the deed of the wife was void, because it violated the purposes for which the power was entrusted to her.

A few words as to the II point above.

If the foregoing positions are well taken, the wife could no more receive from her own trustee a relinquishment of the trust in destruction of it, than she could abrogate the trust by any other forbidden act.

The author of the discharging deed evidently looked upon the transaction merely as a conveyance to the grantee, and assumed that he had power to make it without stopping to consider that he was seeking to give the paper the effect of a release or "discharge" *from* the grantee *to* the grantor. No other discharge is shown, and hence this discharge, so far as it binds the wife, must arise, if at all, by legal implication upon the wife's act of acceptance of the language of the deed of the grantor. That is, she is supposed to take that deed and impliedly to discharge the trustee as fully as if by express release or grant.

But as the rule is that the inclusion of powers in the wife is the exclusion of all other powers, there is no power on the face of the antenuptial deed authorizing appellant to discharge her trustee because such power is not enumerated as belonging to her. No marriage trust could stand for a moment if the wife were, in violation of its terms, to be allowed capacity to release her own trustee, or consent to any other breach of the trust. That would open the door to influences from which it is the inflexible policy of the law to protect her, and would give her an "emancipation" that would transcend the powers of a *feme sole*.

It is equally destructive of the so-called discharging deed in this case to reflect that the duty of the trustee was to *hold* the title and not to convey it until the time appointed—*i. e.*, on appellant's death—when the remaindermen came in.

In Perry on Trusts, Vol. 2, § 921 (2d Ed.), page 557, it is said: "So, if the *cestui que trust* is a married woman, "a conveyance to her, by the trustee, will not discharge "him, but after the death of her husband such convey- "ance will discharge him." Citing *Parker* v. *Converse*, 5 Gray, 336. In this Massachusetts case, cited by Perry, the release was made after the husband's death, and the wife and children were held competent to make it. The necessary implication, which forms the basis of the author's text, is that during the coverture such release would be inoperative.

We, therefore, submit that both the discharging deed and the Baird trust deed of February 13, 1872, are void.

IV.

THE FOURTH POINT, ABOVE NOTED, IS: THE BAIRD TRUST DEED OF FEBRUARY 13, 1872, WAS VOID AS AGAINST APPELLANT, FOR REASON OF THE MISREPRESENTATION, BY WHICH SHE WAS INDUCED TO EXECUTE IT.

Remembering that appellee has came into a court of equity, asking equity, we desire the court to look into the evidence on this point, and consider its bearing upon appellee's responsibility to appellant for the misrepresentations which caused her signature to the trust deed.

It is admitted by appellee in his answer (51) that Baird & Bradley were his agents at the time of these loans by appellee to James M. Marshall. This was a relation which they had held towards appellee, and other investors as well, for several years—certainly since the date of the loan trust deed to Mr. Baird of February 13, 1867. The

nature and scope of the agency fully appear in the record, from the course of dealing as stated by Messrs. Baird & Bradley themselves. Parties desiring loans made application to Baird & Bradley at Chicago. These applications were forwarded to non-resident capitalists, and if acceptable were accepted through Messrs. Baird & Bradley, who communicated such acceptance to the applicant. In the present case such was the mode of bringing the lender into the transaction. For the negotiation of the loan Baird & Bradley charged and received a commission from the borrower; in this instance 2½ per cent. (431). The record shows that at and after the point of acceptance of the application Messrs. Baird & Bradley assumed charge of all the details of examining title, preparing and recording the trust deed, disbursing the lender's funds and keeping custody for him of the securities. It is evident that these things were done as a matter of ordinary routine; and it is equally evident that in so doing Baird & Bradley were acting in the interest of the lender.

Appellee was a capitalist (434) residing in a distant state, West Virginia (399), investing his ready means in loans on Chicago real estate upon such applications as he saw fit, after consideration, to accept. He was a correspondent of Messrs. Baird & Bradley, and as this record shows, dealt through that firm in accordance with the course above indicated. Each case "was reported to him" as was their custom. (347.) His loans were on long time, the Chicago agents examined or had their attorney examine the abstracts of title (410) the security papers were prepared in Baird & Bradley's office (343, 349), they were to look after the loan, *i. e.*, see to payment of interest at the half year periods (373, 387); when loans fell due and were paid, the money was to be remitted or

reinvested upon a new application (376), abstracts of title were to be kept in safe custody at Chicago for parties concerned (400), the resulting correspondence between the agents and the lender extended over several years (355, 384). These things imply (from the moment the lender came into the transaction by the acceptance of the proffered application of February 9, 1872), an important and somewhat permanent agency relation of Messrs. Baird & Bradley towards the appellee. Especially is this apparent in a case where the borrower applied to continue or extend for several years longer a loan already existing for several years between the same parties.

On the above date, February 9, 1872, James M. Marshall made such a written application to Messrs. Baird & Bradley for a loan of $10,000, to be secured upon property already encumbered with the loan of $5,000 of February 13, 1867, the homestead property of appellant in controversy. Of this application Mr. Bradley states (421) that it was signed by J. M. Marshall for $10,000, of which "$5,000 was to pay off a loan that previously had "been made through us." The written part of the application was Mr. Baird's (430). The application was undoubtedly made at the time it bears date.

Mr. Baird states of this application (375) and the negotiation of the loan of $10,000 applied for: "There had "been a prior mortgage of $5,000 on the same property. "* * * It was nothing except the usual routine of such "matters. MR. MARSHALL wanted to get some money, "and proposed that we should negotiate FOR HIM an ad- "ditional loan, and, of course, we went through the "ordinary preliminaries of negotiating with Mr. Marshall "until the loan was finally made. I don't remember any- "thing peculiar in it at all."

This was not appellant's application; she neither signed nor had notice of it. It was presented by Messrs. Baird and Bradley on behalf of Mr. Marshall, the applicant, to the appellee, who accepted it and made the loan. The trust deed to secure it was prepared, as Mr. Bradley states, in the office of Messrs. Baird & Bradley by a Mr. Heman Allen, one of their clerks (349). There was an examination of the abstract. On the abstract so examined occurs the entry: "*No. 18. James M. Marshall "to Thomas E. Marshall; deed in trust dated November "21, 1866, book 206, p. 365; conveys lot 12 & South 12 ft. "3½ inches of lot 13*," etc. [the premises in question] (411).

Mr. Baird says, however, that at the time of the last loan he did not look at that entry. He adds (417) that they had had themselves over ten years' experience in loans, and frequently examined abstracts in other cases—simple cases—and they considered this a simple transaction.

MESSRS. BAIRD AND BRADLEY, AS THEY BOTH ADMIT, WERE WELL AWARE, AT THE DATE OF THESE VARIOUS LOANS (436, 383) THAT APPELLANT WAS LIVING ON THE PROPERTY.

This was actual notice of her rights and put them upon inquiry, even had they not already known of the trust. The language of the abstract of title gave them actual notice that the deed to Thomas E. Marshall was on record at the day of its date, and created a trust. The record copy of this trust deed was visible on the books of the recorder's office until the fire of October 9, 1871, and was therefore open to such examination as Messrs. Baird and Bradley and their counsel saw fit to make on the occasion of the prior loan in 1867.

Nobody appears to have deemed it material or neces-

sary to inform or attempt to inform appellant of the business in hand. Mr. Baird states (374) that he had not been acquainted with Susan C. Marshall prior to the Baird trust deed; he does not remember to have seen her before that time; nor (375) at any time prior to the detainer suit [of 1879]. Mr. Bradley admits (431) that he remembers no conference with appellant concerning any one of these three loan transactions. She gets her first actual information about seven years after the date of the last of the series. Mr. Bradley states (345, 346) he cannot recall seeing Mrs. Marshall; he has no reason to doubt that the negotiation was with her husband. He could not state that appellant appeared at Baird & Bradley's office to take any part in the negotiations. The firm of Baird & Bradley, so far as he knows, made no inquiry whether she had or had not acknowledged the Baird trust deed. Appellant denies all knowledge of the loan, and we see nothing in the record to rebut that denial.

The usual custom of the firm, as Mr. Bradley states (349), " was to hand a deed to a notary to have it acknowledged."

In this instance there was a serious departure from that custom. The deed drafted by Mr. Allen on the 13th of February, 1872, or thereabouts, was not by Baird & Bradley handed to a notary to have it acknowledged; *it was by them handed to applicant himself.* Mr. Baird says (379) that *they handed the security papers to Mr. Marshall to have him execute them.*

Mr. Baird states (382) that " it would not be absolutely inconsistent with their routine for Mr. Marshall " to have obtained the deed on the 13th of February for " the purpose of having it executed and brought back to " them; it would not be what I should say [was] in accordance with the ordinary routine."

Mr. Baird also states that if Mr. Marshall had the deed February 13th unexecuted, he knows of no way in which he could have obtained it without the consent of Baird & Bradley. (382.)

The inquiry naturally arises why occurred this departure from a routine which seems so consonant with ordinary prudence; and especially in a matter where a married woman's homestead was in question as a pledge for a large debt of her husband, without the least communication with her in the business?

The answer is furnished by Messrs. Baird & Bradley (436): "We had great confidence in Mr. Marshall at "the time." That appellant was not responsible for that confidence is evident from Mr. Bradley's explanatory remark, "he had paid promptly up to that time."

It is just as evident that the confidence was developed in the course of business between appellee and Mr. Marshall, both active intelligent men, dealing in the absence of appellant.

THE BAIRD TRUST DEED WAS SIGNED BY APPELLANT ON FEBRUARY 14, 1872; the certificate of the recorder shows that it was filed for record that day. Messrs. Baird and Bradley appear to have departed again from their usual course (436), in disbursing $3,000 of the loan before the abstract was "brought down" showing the record of the trust deed. It was with reference to this favor to Mr. Marshall that Mr. Bradley made the remark above quoted as to their "*confidence in Mr. Marshall.*" He adds: "With what investigation we could make, we "did not feel there was *much risk* in letting him have "$3,000. The remainder of the cash part of the loan was "left to be called for at any time *after the completion of* "*the whole thing*"; by which we understand, after the

abstract had been continued or brought down to include the Baird deed of trust and show a satisfactory title at its date.

Mr. Baird states (378), from his cash book, that the $3,000 was paid to James Marshall February 14, 1872, and the balance passed to his credit, and paid to Mr. Marshall, March 14 [1872]. This balance (accounting for the old loan, $5,000; cash paid as above, $3,000; Baird & Bradley's commissions retained, $250, and expenses of abstract and record,) must have been less than $1,750.

One of the indisputable facts in this case is that neither in the negotiation of the loan, nor in the disbursement of its proceeds, were the rights or even the existence of the appellant recognized by the agents of appellee, save that these agents sent her husband to bring back her signature, and a notarial certificate of her acknowledgment. The notary, without the wife's consent, and without seeing her, gave the certificate as a matter of confidence in the husband. The deed and certificate were accepted by the agents of appellees upon a like confidence in the husband, and with no other evidence than the signature and void certificate. The husband omitted to notify appellee's agents that his wife had not acknowledged the deed, nor did he inform them as to the manner in which he had obtained her signature to the deed which they had placed in his hands. On these matters, so vital to appellant, there was silence, appellee's agents asking no questions, and the husband volunteering no information. The business went forward on the strength of the documents so procured.

Mr. Baird states (412) that they did not ask Mrs. Marshall about the trust interest in this land; had no consul-

tation with her; made no inquiry as to whether James M. Marshall had not the originals of the deeds mentioned in the abstract; made no search (413) or inquiry as to Mrs. Marshall's rights in the property; relied on the records for all the information they had; believed Mrs. Marshall was living on the property; did not consult her in any way as to the disbursement of this money.

Mr. Baird is asked (*ibid.*): "You took no order or "consort [consent] from her as to giving it to Mr. James "M. Marshall, I suppose?" A. "No, SIR; OF COURSE "NOT; IT WAS NOT ANY OF HER BUSINESS."

"Q. Was that matter discussed between you and "Mr. Marshall; as to whether it was any of her business "or not?

"A. No, sir; he bought these papers duly executed, "as his security, and upon these he got the money.

"Q. Did you ask Mr. Shortall whether Mrs. Marshall "appeared before him and acknowledged that deed?

"A. We would not be willing to insult him so much "as to ask him such a question as that. We assumed "that a man was not going to commit a criminal offense, "a man like Mr. Shortall.

"Q. At any rate, you made no inquiry of him about "it?

"A. No, sir.

"Q. You disbursed the money upon the strength of "this certificate?

"A. Upon the strength of the papers as executed."

ON THE MORNING OF FEBRUARY 14, 1872, AT ABOUT 8 O'CLOCK, JAMES M. MARSHALL was at the residence on Indiana avenue, on the point of leaving the house for his down-town office. (138.) He had in his possession, *unsigned by his wife*, the draft of the Baird trust deed,

which had been previously prepared in Baird & Bradley's office by the clerk, Mr. Allen. It had been given to him, as has just been shown, in order that he might procure his wife's signature and acknowledgment. *Within a few minutes* her signature had been obtained by him, and he then left the house, went to the office of Mr. Shortall, the notary, and there procured the false certificate of acknowledgment, on the "strength" of which he induced appellee's agents to disburse the loan. As the deed was returned by Mr. Marshall to appellee's agents, money disbursed and the deed recorded that same day, under a suspension of some of the usual business precautions of the office of Baird & Bradley, the case presents evidence of pressure on the part of the borrower, and an unusual yielding to such pressure on the part of the agents of the lender.

The documents, therefore, as well as the statements of the witnesses, confine the inquiry to a narrow space of time. Whatever was done by way of influencing appellant's signature is shown by the proof to have occurred on February 14, 1872, before Baird and Bradley received back the trust deed from Mr. Marshall. The uncontradicted testimony of numerous witnesses proves the truth of the account above given in the answer and cross-bill of appellant as to the time and nature of the influences under which she signed the Baird trust deed.

It inheres in the nature of the act of appellee's agents in entrusting to James M. Marshall the unsigned deed in order that he might bring into the dealing a new party not then apprised of the matter in hand, that they necessarily contemplated *some* representation by the husband to the wife to induce her signature. It is evident also that the nature of that representation was tacitly left to the discretion of her husband.

The appellant states the occurrence. (91, 92 *et seq.*) She was on the morning of February 14, 1872, sick in bed at her home on Indiana avenue, the premises in controversy. Her husband asked her to sign, stating in answer to appellant's question, that the deed related to property on Prairie avenue. So assured the appellant signed the Baird trust deed. She was then under the care of her physicians, Dr. Hale and Dr. Read, both of whom have corroborated her statement that she was confined to her room by her illness at the time in question. She had been previously and on that day taking narcotics to allay pain (95). It is clear that appellant did not leave her room that day nor for several days before and after (97). Attending upon her were her sister, Mrs. Noble, who testifies at page 135 *et seq.;* and her cousin, Mrs. Boyer, whose evidence is at page 173 *et seq.* Dr. Noble, who testifies (192), was also a member of the family and present on the occasion when the deed was signed. These witnesses living in the family concur in stating that the notary was not in the house on the day his certificate bears date, February 14, 1872, or at any time between the signature and recording of the deed of trust. They all concur substantially as to the misrepresentation made use of by Mr. Marshall to obtain his wife's name. The gist of that misrepresentation was that the paper related to property on Prairie avenue, when it related to the Indiana avenue property. The silence and absence of Messrs. Baird & Bradley, the failure of the notary to exhibit and explain the deed to appellant left her fully subjected to the marital influence of her husband and the special influence of his statement to her.

It would have required greater technical skill and greater power of abstraction than were possessed by

appellant in her partially disabled condition to have spelled out in the deed a disproof of her husband's assurance. She had been, as had her female relatives who have testified, at all times accustomed to be guided in such matters by her husband.

Appellant states (91) that she was at her home on Indiana avenue, sick in bed on the morning of February 14, 1872, about 8 o'clock or half-past. That there were present on that occasion in her room, her husband, her sister, Mrs. Noble, her sister's husband, Dr. Noble, her cousin, Mrs. Boyer, and some of the children. She states (92) Mr. Marshall wanted me to sign a deed. He said he wanted to borrow some money as I remember, and wanted me to sign a mortgage. He told me he wanted me to sign that paper. I asked him on what. He said on a lot on Prairie avenue we owned, and I took a pen and signed it. I didn't know anything about what was in the paper. I would not have known if I had looked at it, for I was not well enough. I was very sick. I was too sick to read the deed. I had been taking morphine under a physician's prescription, Dr. E. M. Hale's. The lot on Prairie avenue was vacant; we owned two or three lots on Prairie avenue. When I was told the deed related to Prairie avenue property, I believed the statement because I didn't think we could put it anywhere else. I didn't think he could put it on our home. I believed what he said or I would never have signed the paper. The transaction occupied a few minutes. (94) He took the paper with him; I never saw it after that nor heard of it, nor heard of the money nor anything connected with it. I never received a cent, never had any benefit of it; took no part in negotiation for a loan on this homestead. I authorized nobody to borrow any money upon it (95), had no nego-

tiation with James A. Paxton about this loan; never heard of him until this suit. I signed only one deed (91) on that day. I had been taking morphine that day and days before. I was confined to my bed all day February 14 and could not get up. (96.) My sister and cousin were there; they both lived with me. Appellant states definitely that she did not leave the house nor the room on that day, nor on the preceding day, and had not left it for a week or ten days before. She says she made no acknowledgment of the trust deed of February 13, 1872; she never went to Mr. Shortall's office, nor did Mr. Shortall on the 14th or 15th of February, 1872, come to her house. She knows because she did not see or hear of him. He did not come to her room on that occasion and did not see her, that she knows of. She denies that she ever made the acknowledgment before Mr. Shortall in question; says she never received any money, the proceeds of any prior loan, upon this homestead property. She didn't know there could be any, and says, "I didn't know "that I could borrow any money, or that Mr. Marshall "could borrow any. I thought it was fixed so that "neither of us could borrow any money on it, or sell it, "or do anything with it but live on it. I thought it was "fixed by Mr. Marshall so that I could have the house, "and after I died it should go to my children." I had no information (99) as to what was in the deed; all I knew was that he told me it was a mortgage on Prairie avenue property to borrow some money. I acted upon that information.

Mrs. Noble testifies (135) that she was living at the homestead on Indiana avenue with her sister, the appellant, at the time appellant signed the Baird trust deed on the 14th of February, 1872. She says her sister had

been quite sick for a week or ten days, and that she had been taking care of her; she had been taking medicine to quiet her from Dr. Hale. On this particular day Dr. Hale had been called in quite early in the morning and had given her some medicine, which he said was morphine, and witness had given her a dose about an hour before breakfast. Mrs. Noble states that her sister was confined to her room and bed during that day; that she was in terrible pain and could not keep still; "would keep "groaning and making a good deal of fuss until quieted "by the medicine." She remembers (137) Mr. Marshall coming in on that morning, in regard to her signing the paper, somewere about 8 or half-past; perhaps later. The witness states that her cousin, Mrs. Boyer, was there, and her husband, Dr. Noble, was aiso present. She had been writing some valentines for the children. Mr. Marshall came in, went to the closet for his coat, and took out a paper and said, "Sue, I wish you would sign "this paper." She said, what is it, or something to that effect. He said, "Oh, it's a paper; I want to borrow some "money on the Prairie avenue property." So he asked me to get a pen, and I took it to the bed--pen and ink—and she signed the paper, and Mr. Marshall took it and went away; and I said, "Sue, you had better "be careful what you sign." She said: "Oh, it don't "make any difference; I have signed away nearly every-"thing; I cannot sign away my home." That was all the conversation we had about the paper. Mr. Marshall went down town, and we went on with the ordinary duties of the day. The deed was not read by Mrs. Marshall. (139.) I was in the habit of believing whatever Mr. Marshall said of that kind. It was not a matter I took a great deal of interest in. I al-

ways believed whatever he said of business matters. I believed that. Nothing was said by Mr. Marshall or any one else to the contrary by way of showing that this paper really related to the Indiana avenue property. Mrs Noble states that she did not learn that it related to the homestead until her sister spoke to her something about the detainer suit brought by Paxton in the United States court, and asked her if she remembered her signing the paper. Mrs. Noble says her sister was under the influence of medicine, "but not so much so but what "we could rouse her to speak with her, or anything of "that kind." She had been sick a week or ten days or two weeks (142). Mrs. Noble states (164) that Mr. Shortall did not come into Mrs. Marshall's room, and was not at the house on the 13th or 14th of February, 1872. She states (167) that she knows that he was not at the house from the 9th to the 15th of February of her own knowledge, because she knows her sister was confined to her room and no one allowed to see her except her family physician. If any one had come and been admitted (169) she would have heard of it.

Appellant's cousin, Mrs. Elizabeth Boyer (173), describes the same occasion on the 14th of February, 1872; she remembers Mr. Marshall coming in from breakfast and taking a paper out of his pocket and asking Mrs. Marshall to sign it. She remembers that she did sign it, and that Mr. Marshall took the paper and put it in his pocket and started down town. Dr. Noble and Mrs. Noble and witness were present. "I remember Mr. "Marshall said, I wish you would sign this paper. She "made some objections, but signed it. I don't remember "the particulars of what was said. Mrs. Marshall at that "time (174) was lying down in bed very sick, suffering

"severe pain." She had been sick a week or ten days before, and remained sick about two weeks after. She did not leave her bed on the 14th. Dr. Hale had been attending her and Dr. Read was called that morning. I think she was worse (175) the 13th, 14th and 15th. I know that nobody besides the members of her family and the physician were in her room on the 14th of February. No one was there on the 13th. Mr. John G. Shortall was not at the house on the 14th of February. I have seen Mr. Shortall (176); I know him by sight. I remember it was in 1872 for different reasons. One is, it was the year after the big fire. I was never present on more than one occasion when a deed was presented by Mr. Marshall to his wife and signed by her. (186.) I remember that this occurred on St. Valentine's day, and the children had always been in the habit of taking great interest in the 14th. On that day we could not give them the attention they were used to on account of the sickness of Mrs. Marshall.

Dr. Noble, husband of Mrs. Noble, who states that he has been in business as a dentist in Chicago since 1863, was present (193) on the morning of February 14, 1872, at the residence on Indiana avenue when a paper, a legal paper, apparently, was signed. Mr. Marshall came in, went to the closet and took out a paper, and says, "Sue, "I want you to sign that paper quick, I am in a hurry "this morning." That is as near as I could say. Could not say the very words. Mrs. Marshall was sick, not in very good humor; there was talk enough that morning to attract my attention, and I thought to myself I had better get out of the room. Finally she asked Mrs. Noble, who was writing or directing some valentines for the children, to hand her a pen, and she raised up on the

bed and signed the paper. The paper was put on a book, and she said, after a good deal of talk, "Thank God, "there is one piece of property I can't sign a deed for." That is my recollection, and I remember it just as well as if it was yesterday, and he took the paper and went away, and I lay there (on the lounge) until about 10 o'clock, when I went to the office. Paper looked like a legal document. I supposed it was a deed or mortgage, something of the kind. I did not know what it was. Witness stated that he knew Mr. Shortall, but never saw him until at the forcible detainer trial. Mr. Shortall was not at the house of appellant (195) while witness was there. Mrs. Marshall was sick in bed at the time and had been for days before; she was suffering fearfully; very much out of patience with everything and everybody; so much so that it was unpleasant to stay in the room.

Dr. E. M. Hale states that he had practiced medicine in Chicago sixteen years; had been the family physician of appellant and family thirteen or fourteen years. He was an attendant upon appellant in February, 1872, from the 1st to the 17th of that month. She was very ill from inflammation of the hemorrhoidal veins. A suppuration occurred, attended with very great pain. Dr. Hale states that he visited appellant every day from the 1st to the 17th of February; he remembers being called very early on the morning of the 14th, on which day he finds two visits charged. He states the pain and distress of appellant in this case was such that he had to resort to opiates. She must have been fully under the influence of opium very shortly after the first administration in the morning, which was before breakfast (201). Usually takes from thirty to forty minutes to put a patient under that influence. He says appellant (202), when not under the

influence of morphine, was very nervous, hysterical and irritable. In fact, there were a good many days when she was not out of the influence, and the two conditions were very much blended together. She continually begged for more drugs, and it was difficult to keep her in morphine within bounds; that is, until the suppuration occurred and the abscesses broke.

After stating the uniform effect of opium on the mind, he states that appellant was confined to her bed and could not walk. As to the 14th of February he says he found her in bed, and cannot imagine her getting up and being about much on that day. He does know that she left her bed on that day. On the afternoon of that day she was delirious and wandering in her mind. Witness states that he has been professor in two medical colleges in Chicago during all but one year since his residence in the city, professor of materia medica and therapeutics in the Hahnemann College and the Chicago Homœpathic College, having been educated at a homœpathic college in Cleveland, Ohio.

Dr. Ambrose Reed states that he has lived in Chicago since 1857; been in the practice of medicine since 1842; had attended Mrs. Susan B. Marshall on the 14th of February, 1872. "My bill enables me to recollect the "date. Independently of the bill I don't think I should, "but the bill calls it all fresh to my mind. (242.) I re-"member the circumstance perfectly well. Mrs. Mar-"shall was confined to her bed with an ulcer, and it was "out of the question for her to stand up or to sit up at "that time. I had to perform an operation upon her. "This is the only occasion that I ever performed any "operation in my professional relations to her." Dr. Reed does not remember whether he performed it in the

forenoon or the afternoon. Appellant complained of the pain and suffering. He should judge that it would be out of the question for appellant to go out of the house or even get up. Dr. Reed saw Mrs. Boyer on the occasion. Does not remember to have seen appellant professionally afterwards. (246.) His relations to the family aside from professional ones are those of friendship and intimacy.

There is no difficulty in finding on this record, as the court found, that appellant did not acknowledge the Baird trust deed. The notary's certificate states an acknowledgment before him February 14, 1882. Numerous witnesses corroborate appellant's statement that she was sick in bed and did not leave her room that day, and show that the deed was not signed, and hence could not have been acknowledged before that day. Hence, unless her acknowledgment occurred at the sick room of appellant, it did not occur at all. The proof shows it did not occur anywhere.

Mr. Shortall, the notary (272), lived within two or three blocks of appellant's house, and passed within a block of it in going to and from his office. He admits (274, 275) that he has "no personal recollection of taking this particular acknowledgment," and gives as a reason for stating that he took this that he never certified knowingly to a lie in his life. Mr. Shortall speaks of having been repeatedly in vain requested (276) to certify to acknowledgments in the absence of the supposed acknowledger, in one instance, by James M. Marshall (277). He says he was not in the habit of taking many acknowledgments (275) about the time in question.

The deposition of James M. Marshall was taken in the detainer case, on the law side, on the 16th March, 1880,

at his residence, in pursuance of an order of court entered the day before. (Additional Transcript, p. 1.) The witness was then in his last illness, and died July 1 following. The verdict in the detainer suit was filed March 18, 1880 (322), so that Mr. Marshall's evidence was before the jury in that case. It was made a part of the proofs in the present record by the order of the court in the case (30), entered July 10, 1880, after Mr. Marshall's death. Having been inadvertently omitted in making up the record, it has been added, by stipulation of counsel, from a certified copy furnished by the clerk of the court below.

Mr. Marshall states (Add. Tr., 2), that his wife signed the Baird trust deed of February 13, 1872, at her house on the morning of February 14, 1872, after breakfast, as he was about to go down town. He took the deed, so signed, to the office of Mr. Shortall as he went down town that morning. He signed the deed at Mr. Shortall's office, and the latter put his notarial seal upon it. The witness says, as soon as he put his name and stamp on it (Add. Rec., 2, 3), "I took it across the way there and "handed it to Mr. Baird, and he looked at it and handed "it over to somebody else, and, says he, that is all right." * * * "It must have been half-past 9, because I "wanted to get $3,000 of this money to use at Sol "Smith's bank there as soon as it opened, or Badger's. I "don't know which, and then they remarked they would "straighten up the balance of the account." He obtained at this time $3,000 of the money. It further appears from Mr. Marshall's testimony that the business at Mr. Shortall's office did not occupy more than five or eight minutes or ten minutes (Add. Rec., 3), as the witness was anxious to meet his bank engagements; that he had left his wife sick in bed at the house; that she did not leave

her bed that day to his knowledge, being in such condition that she could not; Mr. Shortall was not present when she signed and never came near the house, so far as he knew. He says that he never afterwards saw anything more of the Baird trust deed until it came around due; the money obtained, $10,000, less expenses, was used by Mr. Marshall in his business, "real estate brokerage, "and buying and selling, and so forth."

A. On being asked to state what was done by Mr. Shortall and himself when the certificate of acknowledgment of the deed was made by the latter, he says:

"He came up from down-stairs with a cigar in his hand "smoking, and, says I, 'John, I want you to fix up this "paper.' He looked it over and I don't know whether "—he made this kind of a remark, says he, 'What are "you going to do now?'—or something—some little "casual remark like what he used to you or I going in "there now; he was very anxious to get his abstracts "straightened around and people came in there.

"Q. What else took place on that occasion?

"A. Well, he may have said, 'Jim, let us not stop to "talk any to-day, I am so busy, I have so much to do; "we will talk some other time.' He was always fooling "and joking around and smoking, and we going to dinner "together whatever was said was said in a common "office, was where all the boys were sitting around writ-"ing.

"Q. What, if anything, did Mr. Shortall do with the "deed when you told them that there was a deed you "wanted fixed?

"A. Here is what I said to him when I first went in "there; says I, when he came up from down below, says "I, 'John, I want you to put your jews-harp on that'—

" that is a kind of a nickname we have with the notaries.
" Says he, 'What are you going to do now?' something
" of that kind. He just opened it, put his seal on it and
" his name on it; that is the exact words—the jews-
" harp.

" Q. Did you pay him a fee for that, do you remem-
" ber?

" A. I don't remember about that, I can tell by look-
" ing on my cash book; all these little items I have down
" from day to day.

" Q. Look again at this paper, the same I showed
" you before, and state whether this certificate which
" bears date the 14th of February, 1872, and is signed
" by John G. Shortall, notary public, is the paper to
" which you refer when you say he put his name to the
" deed? (Handing witness paper.)

" A. His acknowledgment to the deed?

" Q. Yes?

" A. Yes.

" Q. That is where he put his name, is it? (Indi-
" cating.)

" A. Yes, sir.

" Q. About how long a time did this interview occupy
" between you and Shortall, up to the time when he put
" his name to the acknowledgment, and put on his seal
" and gave you back the paper?

" A. From the time he came up from down below?

" Q. Yes; about how long a time had you been doing
" business with him?

" A. I guess eight or ten minutes, as I said awhile
" ago; he did it up as lively as he could in a business
" way. There was others standing around wanting some-
" thing done by Shortall.

"Q. Had you had former business dealings with "Shortall?

"A. I had.

"Q. How well were you acquainted with him?

"A. Well, we had the usual business acquaintance "and were neighborly friends; he lived over on Prairie "avenue there."

This witness was cross-examined in great detail, and his entire deposition appears in the additional transcript.

Mr. Marshall was not asked by either party to state, nor did he state, what representations were made by him when he asked appellant to sign the deed of February 13, 1872. That branch of the case rests upon the testimony of Mrs. Noble, Dr. Noble, Mrs. Boyer and appellant. It is clear, however, that James Marshall was in pressing need of money that morning, and that the business of the loan was hurried through with the co-operation of appellee's agents and the notary, and that within an hour or so from the time he left appellant's sick-room the money had been obtained and spent, and the deed left with Baird & Bradley for record. The office mark of the recorder shows that the deed was filed for record February 14, 1872. (552.) As Mr. Shortall's certificate bears date February 14, 1872, and as many witnesses saw the deed signed by appellant on the morning of that day limits of the inquiry are sharply defined.

Well might the court find that the deed was not acknowledged.

Central Bank of Frederick and others v. *George W. Copeland and Mary Anne E. Copeland, his wife*, was decided in 1862 by the Court of Appeals of Maryland, and is reported in 18 Maryland, 305. That was a case in which the court held, as against the mortgagee, a mort-

gage by husband and wife of the wife's property to be void for reason of undue influence exercised by the husband towards the wife in procuring it in the absence of the creditor and without the creditor's knowledge.

The mortgage conveyed the real estate of the wife to the creditors, Thomas and McPherson, to secure $3,900 *due by the husband to the mortgagees.* The deed was accompanied by the acknowledgment of the wife upon a separate examination by a justice, certified in the form prescribed by the appropriate Maryland statute. The mortgagees had subsequently assigned the mortgage to the Central Bank, the complainant in the suit, and the bank, as assignee of the mortgage, brought its bill of foreclosure ln the Circuit court of Frederick county against husband and wife. The court below dismissed the bill and the complainants appealed. The evidence satisfied the Court of Appeals, as it had satisfied the Circuit Court, that the husband had procured the execution of the mortgage by threats and other improper influences against the wife. It was proved that neither McPherson nor Thomas, nor any person representing the Central Bank, was present at any time during the day that the mortgage was executed, nor when the threats were made.

The wife had no concern in the debts secured by the mortgage. The case therefore brought the court fairly to the issue whether or not the mortgagees in communicating with the wife solely through the husband were responsible for the misconduct of the husband in procuring her signature for their benefit. That is the identical question now under discussion in the present appeal. The Maryland court treating the assignment to the Central Bank as immaterial, proceeds to the determination of the cause as if between the immediate parties to the mort-

gage. "In this view of the existing relationship of the ap-
"pellants," it says, "the question presented may be de-
"termined as one raised between the immediate parties to
"the mortgage." * * * "A contract, the execution
"of which is induced by fraud, is void, and a stronger
"character cannot reasonably be assigned to one the exe-
"cution of which is obtained by duress. Artifice and
"force differ only as modes of obtaining the assent of a
"contracting party, and a contract to which one assents
"through imposition or overpowering intimidation will be
"declared void on an appeal to either a court at law or
"equity to enforce it. The question whether one exe-
"cutes a contract or a deed with a mind and will suf-
"ficiently free to make the act binding, is often difficult
"to defermine, but for that purpose a court of equity un-
"restrained by the more technical rules which govern
"courts of law in that respect, will consider all the cir-
"cumstances from which rational inferences may be
"drawn, and will refuse its aid against one who, although
"apparently acting voluntarily, yet, in fact appears to have
"executed a contract with a mind so subdued by harsh-
"ness, cruelty, extreme distress, or apprehensions short of
"legal duress as to overpower and control the will."
(Citing authorities.

* * * "*The fact that McPherson and Thomas per-*
"*sonally took no active part in procuring the execution of the*
"*mortgage by Mrs. Copeland, does not strengthen their*
"*right to set it up as a valid deed, nor does it impair her*
"*right to avoid it. Its execution was procured by the hus-*
"*band, acting in their interest and for their benefit, and*
"*as their acceptance of the mortgage implies an adoption*
"*of his agency, they can have no right to enforce it,*
"*free from infirmities originating in this use of uncon-*
"*scionable means to compel its execution.*"

"The only interest, therefore, upon which the mortgage "can be held to operate, *is that of the husband as tenant* "*by the courtesy*. In accordance with these views the "the court will sign a decree reversing the decrees of the "court below; dismissing the bill against Mrs. Copeland "with costs, and remanding the cause of such further "proceedings against George W. Copeland as may be "necessary for the final determination of the appellants' "proper rights and claims.

"Decree reversed and bill dismissed."

We are aware that this court has applied in favor of the assignee of a note secured by mortgage of real estate seeking foreclosure by bill in equity substantially the same rule as to cutting off equities of the maker of the note as would obtain in a suit at law upon the note as commercial paper. But in this case the bond, even if negotiable, was not signed by appellant. Nor was appellee assignee, save as assignee of his own agent, who used the funds of appellee in taking the bond. (4.) The case stands, therefore, as one between the original parties, appellant and appellee, and consequently the equities remain unaffected by assignment. Whatever standing appellee has, therefore, as against appellant is not as holder of commercial paper made by appellant, but as purchaser of land under the Baird trust deed. That was precisely the attitude of the mortgagees in the Maryland case, *supra;* the misconduct of the husband in acting for the purchaser goes to the *bona fides* of the purchase.

A party sent to get a thing without a previous communication with the person to whom he is sent is necessarily the agent of the sender. It appears in this case that Baird & Bradley sent the husband to get the wife's

signature and the notary's certificate. It is undisputed that there was no previous communication with appellant. The case of *Sterling Bridge Co.* v. *Baker* was an application of this principle--75 Ill., 139 (1874). The superintendent of the bridge company sent one Blair to Baker, the plaintiff, to get some jack-screws for use in the company's business. Baker told Blair in delivering the screws he should charge twenty-five cents per day for each screw, but Blair did not report that condition to his principal. The Supreme court says:

"No previous arrangement had been made for these "screws, and when Blair was sent it was to get them. "He was as to this act necessarily defendant's agent. "His request for them was the defendant's request, and "what was said to him as to the terms on which the de- "fendant could have them was said to an agent of the "defendant, about a matter affecting a special duty with "which he was entrusted, and is consequently binding "upon the defendant."

Appellant had no communication with the notary on the strength of whose certificate the appellee accepted the Baird trust deed. She had no communication with appellee save through her husband, but with the notary she had none through any one. Appellee, through Messrs. Baird & Bradley and the husband, put into the hands of the notary the unacknowledged deed; it was a means of enabling the husband to obtain the money by the use of the notarial certificate. Is it to be said that the negligence of appellant overbalanced that of appellee and his notary? A notary is a public agent. In this case he assumed, without authority from her, to act for appellant, but he made no such unwarranted assumption as to appellee. On the 14th of February the deed was

placed in the notary's hands by James M. Marshall, who had been intrusted with it in the course of business at the office of appellee's agent. In taking the deed from the husband's hands the notary was simply acting under the wishes and directions of appellee. Now, it is putting it with excessive mildness to say the notary was negligent in not taking the deed, so received, to appellant and asking her acknowledgment of its contents before handing it over to be taken to Baird & Bradley, and used as a valid security *as he knew it would be.* This negligence of a duty reposed in him by appellee is not the negligence of appellant, but that of appellee's own agent, which in law is that of appellee himself. Baird & Bradley would never have made the loan but for this negligence of Mr. Shortall. If so, that ends the effort to hold appellant responsible for the loss, by reason of her signature alone.

If it be demanded which of two innocent parties shall suffer, shall it not be replied in the language of the Maryland judges, he shall suffer who for his own benefit sends as his agent to the wife the party by whose misrepresentation the execution of the deed is obtained, and who accepts the deed so obtained?

V. VI.

The bill of appellee, as amended, contains the allegation that appellant and her husband by the trust deed in controversy conveyed the premises (4) "in fee simple" to Lyman Baird, "and also all rights, both in law and "equity, including all right of dower *and rights under* "*the homestead laws of the State of Illinois of the said* "*James M. Marshall and Susan C. Marshall of, in and*

" *to said real estate.*" As amended, it also contained the allegation that such deed to Baird purported to be acknowledged by husband and wife, and no allegation that it was not so acknowledged (70). If this is true then Baird's deed to appellee of the fee simple of said premises, which is also pleaded in the bill (6), passed to appellee a " plain, adequate and complete remedy at law."

It was said in the bill that appellant and her husband set up the claim that the wife had not acknowledged the trust deed, but it was not stated that such claim was true; on the contrary, Mr. Shortall, with his notarial seal, was brought forward to prove appellant's claim false. The suit at law was not dismissed, but still remains as a menace and a cloud. The master reported, without objection from appellee, that the Baird trust deed (63, 64), " was in fact executed, acknowledged and delivered as in " said bill charged"; and added the practical suggestion " that the defendant, Susan C. Marshall, be decreed to " deliver to the said complainant the possession of said " premises."

There was afterwards, it is true, a momentary impulse towards amendment on the part of appellee (71), but we submit that nothing was taken from the essential allegations of the bill above quoted.

As drawn and amended we consider the bill of appellee an effort to carry on his suit at law under the guise of a bill in chancery.

But if we perceive the issues and understand the evidence in this cause, there is a deeper error in the decree. It is not merely that appellee did not allege a case of equitable cognizance, but that he failed to prove such a case, and failed to meet the case of appellant. That is a defect which amendments of the pleadings cannot reach.

Hence, we have felt warranted in saying to this court that the sources of jurisdiction in this cause lie in the averments and proofs of the cross-bill. The subject-matter is one of equitable cognizance, and the citizenship of the parties conforms to the law. The value of what is in controversy far exceeds the amount required to give this court an appellate jurisdiction. The prayer of the cross-bill has been denied by the circuit judge. Appellant asserts that denial to be erroneous and inequitable; she believes herself entitled to the relief prayed by her. It is her claim and that of her counsel, that she has proved the material allegations of her case.

This, as she trusts, has been established in what has been said under the I, II, III and IV points above.

Perhaps in the presentation of her argument appellant has occupied an undue share of the time of this court. If so, an excuse may be found in the great mass of the record and the natural solicitude of her counsel, on this second and final occasion, to go fully into the questions and evidence involved. Firmly convinced of the applicability and conclusiveness of the Illinois authorities cited by her, appellant has not sought to catalogue in addition an extensive array of cases or authorities, but has preferred to lay before the court the simple facts relating to the issues tried below.

Appellant therefore submits that the decree should be reversed and the cause remanded; that the bill of appellee ought to be dismissed because neither allegation nor proof sustains it; that relief should be granted on her cross-bill, and that incidental thereto the court below should annul the Baird trust deed, and require appellee to account to appellant for the use and occupancy since he took posses-

sion of the premises, under the decree; he being allowed to withdraw out of court, the $1,000 now on deposit by him under the decree; and that, finally, appellee be perpetually enjoined from prosecuting suits at law and compelled to make restitution of possession to appellant.

Respectfully submitted.

GEO. L. PADDOCK,
Of Counsel for Appellant.

PADDOCK, ALDIS & WRIGHT, Sols.,
65 Portland Block, Chicago.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1887.

IN EQUITY.

SUSAN C. KNIGHT, (FORMERLY SUSAN C. MARSHALL),
Appellant,
vs.
JAMES W. PAXTON,
Appellee.

Appeal from the Circuit Court for the Northern District of Illinois.

BRIEF FOR APPELLEE.

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Appeal from the Circuit Court for the Northern District of Illinois.

BRIEF FOR APPELLEE.

On February 13, 1872, James M. Marshall borrowed of appellee $10,000, and gave as security therefor a trust deed, in the nature of a mortgage, from himself and wife (the appellant) on the real estate in question, to Lyman Baird. This money not being paid when it became due, the real estate was sold under a power of sale in the trust deed and bought by appellee. Marshall and his wife, being in possession of the premises, refused to deliver them up to appellee, who thereupon brought a suit of forcible detainer against Marshall and his wife

to recover possession of the premises, in the Circuit Court of the United States, for the Northern District of Illinois.

Just before the trial of this forcible detainer suit which was on March 16, 1880, the deposition of Marshall, who was sick, was taken at his home. In that deposition he stated that Mrs. Marshall did not acknowledge the trust deed. This was the first intimation that the appellee, or his agents, had that such a claim would be made. On that trial appellant testified that she did not acknowledge the trust deed, and other witnesses were introduced to corroborate her statement. The certificate of acknowledgment, dated February 14, 1872, was signed by John G. Shortall, a notary public, and one of the prominent abstract makers of Chicago. He testified that while he could not recall the taking of that particular acknowledgment, he had frequently taken Mrs. Marshall's acknowledgment, and several times at her house, and that he must have taken her acknowledgment on the day of the date of the certificate, or the evening previous, because he never made a certificate of acknowledgment unless the party had actually made the acknowledgment in his presence, although Mr. Marshall had requested him to do so in the case of Mrs. Marshall, and he had refused. (272–285.) The verdict of the jury was for the defendants. This was set aside by Judge Blodgett on a motion for a new trial. Appellant states her belief as to the reasons for this action. The reply of appellee is that, as there is nothing in the record to support that belief, all that with certainty or propriety can be said is that the judge set aside the verdict because he thought it ought not to stand.

On May 13, 1880, the appellee filed the present bill against James M. Marshall and his wife, setting forth his title to the premises under the trust deed and trustee's sale, and alleging his inability to obtain possession of the premises on account of Mrs. Marshall's claim to a homestead therein, and that the premises are worth a great deal more than said homestead, and praying that the homestead may be set off and the remaining property be delivered to him, or if the premises cannot be divided that they be delivered to him on his payment into court for the use of defendants, the sum of $1,000. This is in accordance with the well settled practice in this state.

Hotchkiss v. *Brooks*, 93 Ill., 386.
Cummings v. *Burleson*, 78 Ill., 281.
Muller v. *Indivreiden*, 79 Ill., 382.

On the trial of this suit the technical objection was raised that the bill alleged that the trust deed was acknowledged. Thereupon it was amended so as to read that the trust deed purported to be acknowledged. On this hearing another technical objection is raised that the bill does not positively allege that Mrs. Marshall did not acknowledge the trust deed. It is certainly sufficient to allege that the defendants claim a homestead, and that the complainant does not choose to contest that claim, but asks to have it set off to them, and only asks for a decree for the possession of the premises, less the homestead.

On July 1, 1880, a few weeks after this bill was filed, James M. Marshall died. The appellant in her answer set up four defenses: First, that the property in question was conveyed in trust by an antenuptial settlement,

and that in consequence thereof she had no power to make the trust deed of February 13, 1872; second, that from sickness and the use of opiates she had not sufficient mental capacity on February 14, 1872, to execute said trust deed; third, that when she signed said trust deed her husband fraudulently stated to her that it related to property on Prairie avenue; fourth, that after the money secured by that trust deed became due, the time for payment was extended by the appellee.

On the examination before Henry W. Bishop, the master to whom the case was referred, the following facts were developed:

December 1, 1858, Carter Harrison, being the owner of two lots on Indiana avenue, Chicago, of which the premises form a part, conveyed the same to Joseph N. Barker for $5,000, who gave a mortgage back for the purchase money. (295, etc.)

November 1, 1860, Barker conveyed the premises to James M. Marshall, and Marshall mortgaged them to Carter Harrison to secure $3,800, purchase money, that being the proportionate share for the premises of the above $5,000 indebtedness. (308, etc. 302, 469.)

November 21, 1860, James M. Marshall conveyed the premises to his brother, Thomas E. Marshall, in trust for Susan C. Larmon (the appellant), whom he was about to marry, for her life; after her death to her children; in case she died without children, to Susan E. Marshall and Ophelia K. Larmon for life, with a remainder to James M. Marshall and his heirs. This conveyance was subject to the $3,800 mortgage to Carter Harrison. (464, etc.)

November 22, 1860, James M. Marshall was married

to Susan C. Larmon, the appellant. At this time the premises were unimproved and were not worth the incumbrance upon them. (449, 296, 110.)

May 18, 1861, Thomas E. Marshall, Susan E. Marshall and Ophelia K. Larmon conveyed the premises to appellant for the purpose, as was stated in said deed, of determining said trust and of conveying to appellant all rights, legal or equitable, which they acquired by said deed of trust of November 21, 1860. James M. Marshall witnessed this deed. No children were at that time born to appellant. (457, etc.)

Some time in 1861 or 1862 James M. Marshall erected on the premises what was intended as the rear part of a house, and went to live there with his wife. (88.)

January 13, 1863, Carter Harrison released to appellant the mortgage of $3,800, of November 1, 1860, James M. Marshall having at that time paid up said mortgage debt, except $900 thereof, which Harrison threw off from his claim on account of the depreciation in the property. (472, 298.)

April 1, 1863, James M. Marshall and his wife mortgaged the premises to Nathan B. Ives, to secure a loan of $1,500, obtained through the agency of Baird & Bradley. At this time Marshall was erecting the front part of his house, and this loan was to enable him to make this improvement on the property. This mortgage was acknowledged before John G. Shortall. (475, 390.)

February 13, 1867, James M. Marshall and wife made a trust deed in the nature of a mortgage, of the premises, to Lyman Baird, to secure a loan of $5,000 obtained from appellee through the agency of Baird & Bradley. This trust deed was acknowledged before

John G. Shortall. This $5,000 was used in part in paying up the Ives mortgage. (504, 392.)

February 13, 1872, is the date of the trust deed in question, signed by James M. Marshal and wife, having John G. Shortall's certificate of acknowledgment, and given to secure a loan from appellee of $10,000 to James M. Marshall, made through Baird & Bradley. Of this loan $5,000 was to secure the release of the trust deed of February 13, 1867. (534, 393.)

I.

THE ANTENUPTIAL SETTLEMENT.

In view of these facts, the first question that presents itself is, had appellant the power to make the trust deed of February 13, 1872. Counsel for appellant starts out with one of those technical objections with which the defense bristles at every point. He says that the deed of May 18, 1861, from Thomas E. Marshall, Susan C. Marshall, and Ophelia K. Larmon to appellant was never delivered to appellant. There can be no doubt that the decision of the experienced master, who heard the testimony, and of Judge Drummond, who tried the case, that there had been a proper delivery of this deed, was correct. The statement of appellant that she never heard of this deed of May 18, 1861, is not sufficient to overcome the presumption of delivery from all the facts in the case. Were she an impartial witness, and her memory fairly trustworthy, it would not be strange if she failed to recall many things that had happened twenty years before. The

evidence in this case shows that her memory is not merely weak, but treacherous. She says she never heard of the Harrison mortgage, though it is described in the antenuptial deed, and though the release of it was made to her. (133, 469, 472.) Was that release never delivered? All the evidence shows that the husband, J. M. Marshall, had the entire charge of this property, and all the papers relating to it. (318.) He paid off the Harrison mortgage when it became due (298, 302), borrowed the money to build the house (390), and from first to last paid every expenditure (400) in connection with the property. The delivery was doubtless to him as her agent. Moreover this deed to her from the trustee and others was clearly for her benefit. It was delivered to one whose relation to her and the property was such that an acceptance may fairly be presumed. This presumption is strengthened by the fact that she united with her husband in the Ives mortgage of 1863, and the trust deed of 1867.

Bryan v. *Wash*, 2 Gil., 557.
Rivard v. *Walker*, 39 Ill., 413.
3 Wash. R. P. (5th ed.), 315, *582.

At the time the deed of May 18, 1861, was made, Marshall had decided to live on the property, and the parties evidently thought it would be better to have the legal as well as equitable title in appellant. As there were no children at the time, and all the parties in interest united in the deed, the husband evidencing his consent by witnessing it, it was supposed the conveyance would so far vest the title in appellant, that a deed from her and her husband would convey the entire title. And it would have done so had there been no children.

This brings us to the important point in the case. It is claimed that the trust deed of 1872 is invalid on the ground that Mrs. Marshall had no power to make it, either under the trust deed of 1860, or the conveyancing acts of this state.

In support of this position the case of *Swift* v. *Castle*, 23 Ill., 209, is relied on. That case was decided on the law as it stood in 1856. By that law, a married woman could convey her real estate by joining her husband in a deed thereof, and acknowledging it in the manner therein provided.

R. S. Ill. 1845, Ch. 24.

"SEC. 17. When any husband and wife residing in "this state shall wish to convey the real estate of the "wife, it shall and may be lawful for the said husband "and wife, she being above the age of eighteen years, "to execute any grant, bargain, sale, lease, release, "feoffment, deed, conveyance or assurance, in law "whatsoever, for the conveying of such lands, tene-"ments and hereditaments; and if, after the executing "thereof, such wife shall appear before some judge or "other officer, authorized by the chapter to take ac-"knowledgments, etc."

Under that law it was held that the validity of such a deed depended entirely on the acknowledgment. By that law a married woman could make no contracts for the conveyance of her land, or enter into covenants with reference to it, or make a power of attorney for its conveyance. The courts held that they could not reform a deed made by a married woman, and refused to enforce their contracts for the conveyance of their real estate, whether made with or without

their husbands, even though they had received the purchase price for the same. So that, under this act, a married woman could only do what came within the letter of the statute, namely: make a conveyance of her land by complying with certain formalities.

All this was changed by the law of 1869, which enabled a married woman, by joining with her husband, not merely to convey her land, but to enter into contracts with regard to it, as freely as if she were a *femme sole*.

Hogan v. *Hogan*, 89 Ill., 427.
Bradshaw v. *Atkins*, 110 Ill., 329.

The act of March 27, 1869, is as follows:

"SECTION 1. Any *femme couverte* being above the age " of eighteen years, joining with her husband in the ex- " ecution of any deed, mortgage, conveyance, power of " attorney, or other writing of or relating to the sale, " conveyance or other disposition of lands or real es- " tate, as aforesaid, shall be bound and concluded by " the same, in respect to her right, title, claim, interest " or dower in such estate, as if she were sole and of full " age as aforesaid; and the acknowledgment or proof " of such deed, mortgage, conveyance, power of attor- " ney or other writing, may be the same as if she were " sole."

Now, when the court in *Swift* v. *Castle*, decided that the deed of a married woman of trust property was invalid, because it was not in execution of any power given by the trust deed, it must have been on the ground that something more than a conveyance was necessary to make the deed operative. That something was the power to agree to a waiver of the provisions of

the trust deed. This, under the law as it then stood, she could not do. She could merely convey in the manner provided by the statute of 1845; but she could enter into no agreement. This decision was based entirely on the ground of the disability of married women. Had the *cestui que trust* been *sui juris*, no question could have arisen as to the validity of the deed. For it is an elementary principle that when all the parties in interest unite in the conveyance of trust property, a valid title will pass.

1 Perry on Trusts, Sec. 285.

In the case at bar, the disability under which married women labored when *Swift* v. *Castle* was decided, had been removed by the act of 1869. By the provisions of that act a married woman, joining with her husband, could not only convey her property but could enter into any agreement with reference to it, in fact could do anything with regard to it that a *femme sole* could do.

Hogan v. *Hogan*, 89 Ill., 427.

By the deed from Thomas E. Marshall, the trustee in 1861, the legal title to this property became vested in Mrs. Marshall. By her deed of 1872, in which her husband united, her life estate passed to the grantee, as completely as if she had been a *femme sole*. She is estopped from denying its validity.

The fallacy of the argument of the counsel for the appellant consists in assuming that the only difference between the statute of 1845 and that of 1869, in reference to conveyances by married women, is that the former required an acknowledgment, and the latter did not. But, as is evident from the language of the act of 1869, that act not only made a married woman's deed

without acknowledgment valid, but it greatly enlarged the power of married women in reference to their real estate, by enabling them to make contracts with reference to it, and generally to dispose of it, their husbands joining in the instrument, as if they were unmarried. The decisions of the Supreme court of Illinois which we have cited are explicit on this point. In *Hogan* v. *Hogan*, 89 Ill., 431, the court say:

"This latter statutory enactment (the act of 1869) "worked a marked change in the laws. Thereafter the "acknowledgment ceased to be the effective means to "work the transfer of title. The certificate of her ac- "knowledgment might thenceforth have been the same "as that required in the case of a *femme sole;* and without "any acknowledgment whatever, proof of her execu- "tion of a conveyance might have been made as at "common law. So also, from that time forth, her con- "tract in writing, made jointly with her husband, for "the disposition of her lands, became binding upon "her, and might have been enforced in a court of chan- "cery, and she compelled to a specific performance of "the same. One only distinction between her condi- "tion and that of an unmarried woman, in reference to "the alienation or disposition of real property, was still "retained. The law still required, before she could "convey or make any valid contract for the disposition "of her lands, her husband should join with her in the "deed or other writing." See, also,

Bradshaw v. *Atkins*, 110 Ill., 329.
Edwards v. *Shoeneman*, 104 Ill., 278.

The case of *Breit* v. *Yeaton*, 101 Ill., 242, also cited by counsel for appellant, was decided on the law as it stood prior to 1869. All that was decided in that case was

that the deed in question was invalid as an execution of the power in the trust deed, and could not avail under the conveyancing act then in force as the deed was from the wife to the husband. It is conceded in the opinion in this case (page 262), that the deed in question would have been valid under the law of 1874. If this is so, unquestionably a deed from a married woman and her husband of trust property, under the act of 1869, would be valid.

We have argued this case thus far, as if the Supreme court of this state had decided that when any particular mode of disposing of trust property is allowed by the trust deed, no other mode can be used, even though the trust deed contains no words restricting the parties to that mode. But that has never been decided in this state. The court will not fail to notice that the only point decided in *Swift* v. *Castle*, was that when the trust deed restricts the parties to a particular mode of disposing of the trust property, no other mode will be valid. In the opinion of the court, a great deal more than this was said by way of argument, but up to the present time no decision of the Supreme court of Illinois has gone further than the actual point decided in *Swift* v. *Castle*. On this point all the cases, English and American, are at one. As there are no restrictive words in the trust deed, in the case at bar, it would not therefore be in conflict with the point decided in *Swift* v. *Castle* to hold that the deed from Mrs. Marshall and her husband of 1872, was valid, without reference to the conveyancing act of 1869. Such a decision would be in accordance with the English cases and with the cases in very many of the American State courts.

3 Pomeroy's Eq., Sec. 1104–1109.

In this trust deed there are not only no words restricting the parties to a particular method of conveying the property, there is also no restraint on anticipation. As the wife is given full control over the income for her life, she has the power to mortgage that interest. So that the trust deed to Baird would be valid, without the conveyancing act of 1869.

3 Pomeroy's Eq., Sec. 1107 and 1108, and note.

The provisions of this antenuptial trust deed are, so far as appellant is concerned, as follows:

"Upon trust that he, the said party of the second "part (Thomas E. Marshall), his heirs and assigns, shall "and will, from time to time, let and demise the said "premises, and recover and receive the rents and in- "come thereof, and pay over the same as and when re- "ceived unto the hand of Susan C. Larmon (appellant), "of said city of Chicago, or to such other person or per- "sons as she, in writing, under her hand, from time to "time, may authorize, appoint and empower to receive "the same, or, at her option, to permit and suffer her, "the said Susan C. Larmon, to occupy and enjoy the "same, or to let and demise the said premises, or any "part thereof, and to take and receive the rents and in- "come thereof during all the time of her natural life, "for her own separate use and support, and so that the "same shall not be in the power or liable to the debts, "control or engagements of any future husband of the "said Susan C. Larmon, she paying all taxes and assess- "ments thereon and all proper and necessary repairs "thereof, and upon the receipt of such rents and income "to make, execute and deliver in her own name any

" and all necessary and proper receipts and acquittances " therefor, and the receipts and acquittances so given " by her, or the receipts of such person or persons as " she may, in writing, authorize, appoint and empower " to receive the same as aforesaid, notwithstanding any " coverture, or whether she be covert or sole, shall be " deemed and held to be good and valid discharges in " law for all purposes whatever."

II.

MRS. MARSHALL'S MENTAL CONDITION.

In her answer Mrs. Marshall says that she signed the trust deed to Baird of 1872, on the 14th of February, 1872. " That at that time respondent was confined to " her bed by sickness, and by reason of such sickness " and the effect of narcotics prescribed by her physician " to relieve the pain thereof, respondent was not of " sufficient mental capacity to read or understand the " said deed if the same had been read to her; that said " deed, as respondent has since learned by inspection, " was so long and prolix, and framed in such technical " language, that in respondent's aforesaid mental and " physical condition, it was not possible for her to com- " prehend the effect and meaning of said instrument."

This pretense was naturally a great surprise to appellee, for it was the first time that he had heard of it. On the trial of the forcible detainer suit no such claim was made or intimated. Her defense then was that she had not acknowledged the deed; now when we bring a chancery suit, for the purpose of overcoming that difficulty, she sets up an entirely new defense.

For reasons which we shall mention hereafter, we think that Mrs. Marshall signed the Baird trust deed on the evening of the 13th of February. But if her claim is true that she signed it on the morning of the 14th of February, the proof utterly fails to show that she was out of her mind, or unable to understand what she was doing, at that time. There were in the room at the time, besides Mrs. Marshall and her husband, her sister, Mrs. Noble, who was acting as her nurse, her sister's husband, Dr. Noble, who was lying on the lounge, reading the morning paper, her cousin, Mrs. Boyer, who was preparing a poultice, and two of the children. (192, 138, 173, 189, 195.) Of these five adult persons who were present, Mrs. Marshall is the only one who testified that she was so under the influence of opiates as not to be responsible for her actions, and on this point her testimony is a mass of inconsistencies, absurdities and contradictions. (118–128.) But she herself admits that she knew who were in the room, what each of them was doing, what day it was, what time of the day, remembers everything her husband said and what she said, states with a great deal more fullness than the other witnesses what was said, or what she claims was said by her husband and herself, and that she would not have signed the paper, if her husband had told her it related to the Indiana street property. So that from her own testimony it is clear that she could have read, or have had read to her, if she had so desired, the description of the property, which was short and simple. There was no necessity for her reading all the minute provisions of a mortgage. She remembers distinctly that her husband told her it was a mortgage (92), though all the other witnesses say the word he used was

paper; that he said he wanted to borrow money on it (117), though the other witnesses do not recollect such words.

The only other witness who speaks of her being in any degree under the influence of opiates is Mrs. Noble. All this witness says is that Mrs. Marshall was "ugly, "contrary and impatient," (136.) "At this time she "was wide awake when Mr. Marshall came into the "room; that is, she was not stupid, but was more or less "out of her natural state; morphine never made her "stupid, as it does some other people, but made her "more restless." (141.)

Dr. Noble says Mrs. Marshall had a good deal of unpleasant talk with her husband that morning, so much so that he thought he had better leave the room. He doesn't remember what the quarrel was about, but says it was not an unusual thing. (193, 197.) That this was not the result of opiates, but of her natural disposition, is evident from her own testimony, in which she said, speaking of her husband, "we used to quarrel like "everything sometimes." (106.)

Dr. Hale, who was attending Mrs. Marshall and one of the children, who was sick with the measles, was at the house between six and seven that morning, but says nothing about her being under the influence of opiates at that time.

Dr. Reid, who was at the Marshalls' that day between ten and eleven (158, 186, 124), in reply to an inquiry of appellant's counsel as to her mental condition at that time, and her capacity to attend to business, replied: "I saw nothing in regard to her mental condition." (243.) He performed an operation, but prescribed no

medicine, as he stated, "I didn't think the occasion de-
" manded it." He said Mrs. Marshall talked with him freely and perfectly intelligently. (250.)

In determining to what extent Mrs. Marshall was under the influence of opiates that morning, it is of the utmost importance to know how much opium she had taken just previous to signing the deed. On this point appellant's witnesses are in a state of hopeless contradiction. Dr. Hale testifies that when he was there that morning, between six and seven, "the stomach was so
" irritable she could not retain any medicine and I ordered an injection of opium." (200). He thinks it was thirty or forty drops of laudanum he ordered. He did not see it administered and did not have the medicine, as he did not carry it with him. (209, 219.) On the contrary, Mrs. Noble, who was nursing her sister, and to whom Dr. Hale says he gave his directions, testifies:
" On this particular day Dr. Hale had been called in
" quite early in the morning, and had given her some
" medicine, which he said was morphine, and I had given
" her a dose about an hour before breakfast. I think
" I gave her one while the doctor was there, and one
" about an hour afterwards; gave them to her one hour
" or so apart during the day until she was relieved." (136.) Mrs. Noble does not say what was the size of these doses, but as Dr. Hale is a homœopathic physician, they were probably small ones, and certainly must have been so, if she gave them an hour or so apart during the day until she was relieved.

Mrs. Noble makes no allusion to an injection. Neither does Mrs. Marshall, who testifies that she had been taking morphine that day, "and all the night before, and days before." (95.) When asked how she

knew she was taking morphine, she said "I could tell when I tasted it." (118.)

Now, in this conflict in the complainant's testimony, which is to be believed, Dr. Hale, when he says her stomach was so sensitive it would not retain medicine, or Mrs. Noble, when she says she gave appellant morphine every hour that day? Dr. Hale, when he says he prescribed an injection of laudanum, or Mrs. Noble, when she says he prescribed doses of morphine to be taken every hour? Dr. Hale, when he says no opiate was administered while he was there, or Mrs. Noble, who says she administered one dose while the doctor was present? Whatever we may believe were the facts in the case, this court must hold, as the court below held, that the appellant, on this point, has not made out her case.

The probabilities in the case, however, are these: Dr. Hale is probably correct in his recollection that Mrs. Marshall's stomach was so sensitive that morning, that she could not retain medicine, and that he prescribed an injection of laudanum. Mrs. Noble is probably mistaken in supposing that Dr. Hale prescribed morphine powders, and that she gave them to Mrs. Marshall during that day. Mrs. Noble and Mrs. Marshall are probably correct in denying, as they do impliedly, that an injection was administered, for the reason that Mrs. Marshall was suffering from an ulcer of the rectum, resulting from piles. (205, 247.) In her condition an injection could not be administered without intense pain, and both Mrs. Noble and Mrs. Marshall would have remembered it, if they remembered anything that occurred that day. This explains why Dr. Reed was called. Finding that she could not swallow morphine,

on account of her sensitive stomach, and could not take an injection without intense suffering, on account of the ulcer, Dr. Reed, the old family physician, was sent for, and he at once relieved her by lancing the ulcer.

III.

MR. MARSHALL'S FRAUDULENT REPRESENTATIONS.

The third defense set up in Mrs. Marshall's answer is that when she signed the Baird trust deed, her husband told her it was a mortgage of Prairie avenue property, and that she would not have signed if she had known it related to the Indiana avenue property, which was her homestead.

If, as Mrs. Marshall claims, this deed was signed February 14, 1872, the testimony already referred to, as well as the other testimony in the case, shows that if she had read the short description of the property in the deed, which stated that it was on Indiana avenue, the reading of which would not have taken even a minute, her condition was such that she would have known that she was conveying her homestead. If she did not want the trouble of reading it herself, she could have asked her sister, her sister's husband or her cousin, who were all present, to read it to her, or to read it themselves, and tell her what property it related to. (112.) With these ample means of information, if she did not choose to avail herself of them, she should not be allowed to deny the validity of the deed as against a *bona fide* purchaser for value. Were married women allowed to do this but few titles would be secure.

2 Bishop on Married Women, Sec. 483, and cases cited.
Martin v. *Brittinham*, 76 Ill., 617.
Spurgin v. *Traub*, 65 Ill., 170.
McHenry v. *Day*, 13 Iowa, 445.

The case of *McHenry* v. *Day*, 13 Iowa, 445, is on all fours with the present case. In that case there was a trust deed by husband and wife of several town lots, including their homestead. The wife signed the deed without reading, on the representation of her husband that it did not include the homestead. Neither the trustee nor the beneficiary who loaned money on the security of this deed, knew of this false representation. Held, that the wife could not, as against this beneficiary take advantage of her negligence and make it the ground of relief against the consequences of her own signature. The acknowledgment in that case was also defective.

In *Spurgin* v. *Traub*, 65 Ill., 170, the court refused to set aside the deed of a married woman who could not read English, and spoke it imperfectly, and who said she supposed, and that her husband told her, it related to other property than that actually described. The court say: "It was her fault not to use the means of "knowledge within her reach." The court further say: "It is an alarming proposition, as regards the security "of titles, that a married woman, after having executed "a deed in apparent conformity with all the require-"ments of the law, can have the same set aside, on "making proof of fraudulent representations to her by "her husband and son of the contents of the deed, to "which misrepresentations the grantee was in nowise "privy."

The case of *Bank* v. *Copeland*, 18 Md., 305, cited by counsel for appellant, was a case of duress, and the mortgage was given to secure a pre-existent debt. It does not appear what were the special facts in that case which led the court to say that the creditor made the husband his agent in obtaining the wife's signature. But if the statement was made simply on the ground that the creditor in endeavoring to secure a pre-existent debt was to be regarded as the actor, as one soliciting a favor (though such a statement was uncalled for, and had nothing to do with the decision of the case), it could not be applied to a case like the present, where the husband was soliciting a loan, on a security he brought to the lender. The borrower was asking a favor of the lender, not the lender of the borrower. It was the duty of the borrower to make the trust deed, and to bring it to the lender properly executed. The fact that the trust deed was written in Baird & Bradley's office, and that Marshall took it home to be executed, on account of his wife's sickness, did not alter the relations of the parties to each other, did not make Marshall Baird & Bradley's agent in any sense of the word.

But this defense is not sustained by the evidence. Of the five adult persons who were present when the Baird trust deed was signed, Mrs. Marshall and her sister, Mrs. Noble, are the only persons who say that Mr. Marshall stated to his wife that this paper related to Prairie avenue property. James M. Marshall's deposition was taken in the detainer case, a few days before the trial, and has been used by appellant in this case. When that deposition was taken Mr. Marshall was on a sick bed, which proved to be his death-bed. In that deposition, he merely states that Mrs. Marshall did not

acknowledge the deed. There is not the slightest intimation that there was any other defense to this deed than the want of Mrs. Marshall's acknowledgment. Nothing is said about his representing to his wife that this was a mortgage of Prairie avenue property, or of his wife being in a condition not to know, or be responsible for what she was doing. Counsel for appellant try to break the force of this fact by saying that neither party questioned Mr. Marshall on this point, as if appellant and appellee stood on common ground in this respect. But when this deposition was taken appellee had no intimation what defense appellant would set up, and did not suppose, and had no reason to suppose that there was any valid defense to the deed. When counsel for appellant inquired about the want of acknowledgment, and then stopped, appellee naturally supposed that was all the defense there was to the deed. Appellee had no reason to suppose that the witness had committed still greater frauds than those he admitted, and that he must draw out by a cross-examination a full disclosure of his wrong doing. We cannot for a moment suppose that his counsel had any knowledge of any other defense to the deed than its want of acknowledgment.

Neither Dr. Noble, nor Mrs. Boyer, who were both present and witnessed the signing, and heard the conversation between Marshall and his wife, have any recollection of Mr. Marshall's saying the paper related to Prairie avenue property. This is all the more remarkable, if any such words were used, because Dr. Noble says there was quite a sharp altercation between Marshall and his wife, so much so that he was about to leave the room. (197.)

This leaves Mrs. Noble as the only witness to corroborate Mrs. Marshall on this point. This witness testifies (and all the other witnesses are in the same case) that her attention was not called to this transaction till some eight years after it happened. (153, 183, 111.) It would not be strange if her recollection of this transaction was somewhat vague and uncertain, and if, on talking the matter over with her sister, she should assent to any statements her sister might make, and suppose that they described events which actually occurred. That her memory cannot be relied upon as to what took place on that morning, is evident from the conflict between her testimony and that of Dr. Hale, in reference to the opium, to which the attention of the court has already been called. It is further evident, from this very significant fact: Dr. Reed, the old family physician, was called in between 10 and 11 o'clock in the forenoon of that same 14th of February. He spent an hour there, making a careful examination of Mrs. Marshall's condition, and finally lanced the ulcer. It discharged a large quantity of pus, and she was at once relieved. (243, 244, 248, 249.) This was the crisis in the case, and from that time she began at once to amend. This was Dr. Reed's only visit, and so complete was the relief that no prescriptions were necessary. The sharp pain was gone. Nothing remained but for the soreness to heal.

All this appears from Dr. Reed's testimony. And yet Mrs. Noble testifies that she remembers Dr. Reed was sent for that morning; that he came between 10 and 11 o'clock; that she was present in the room while Dr. Reed was there, but that she does not remember his lancing the ulcer, and does not remember what he

did while he was there. (158.) This, the most important event in that painful sickness, Mrs. Noble, the nurse of Mrs. Marshall, says she does not remember. The operation which relieved her patient's sufferings and made every member of that household breathe freer, she has no recollection of, and yet she undertakes to testify to what was said and done that day about so trivial a matter as the signing of a paper, which Mrs. Marshall was constantly in the habit of doing. (103-105, 445, 446.)

Mrs. Noble was directing valentines for the children when this conversation took place. (194.) She did not know that her sister had any special interest in the Indiana avenue property, so that there would have been nothing to arrest her attention if Mr. Marshall had said Indiana avenue property. (160.) A witness whose memory is so unreliable as to matters of most consequence to her, and which she would be most likely to remember, cannot be of any value in support of Mrs. Marshall's testimony, as to a single expression used by Mr. Marshall that morning. The memory of the two sisters seems to be equally untrustworthy.

This brings us to the question, is Mrs. Marshall to be believed when she says her husband told her that this trust deed related to the Prairie avenue property? I will briefly state the reasons why it seems to me she cannot be believed on this point. In the first place, she is testifying under the pressure of the strongest possible interest. In the second place, all the testimony shows that she is a woman whose imagination is a great deal stronger than her memory. It seems easy for her to believe, or at least to be willing to testify, that anything happened which will help her case. It is important to

her defense to make out that she was so far under the influence of opiates that morning that she didn't know what she was doing. So she resolutely testifies to that effect, notwithstanding the other witnesses fail to support her, and in spite of the absurdities and contradictions in which that testimony involves her; for she fails to see that such a condition of mind is inconsistent with the intelligence which she says, and all the other witnesses say, she exhibited at the time of signing the deed. To make out that she was demented by opium, she testifies that she was taking morphine powders that morning (120, etc.), though on this point she is flatly contradicted by Dr. Hale. To strengthen her position that she did not intelligently execute this trust deed of 1872, she says that she did not know of any prior trust deeds on that property. (98.) Yet the evidence shows that she did sign and acknowledge the mortgage of 1863, and the trust deed of 1867 on the same property. (107, 475, 504, 272–278.) She testifies that Dr. Hale visited her every day after February 14, 1872, for two or three weeks. Dr. Hale says his visits ceased February 17th. (124, 205.)

Whatever apologies may be made for Mrs. Marshall, on the ground of ignorance, confusion of ideas, defective memory and the warping effects of a strong personal interest, there are some things in her testimony which seem inconsistent with an honest purpose. One of these is her failure to allude on the trial of the detainer suit to her mental condition, which she makes so conspicuous in this suit (129). Another and much more important fact is this: Mrs. Marshall testified on the trial of this suit that she remembered Dr. Reed visited her that morning of February 14, 1872, and did not call after-

wards. She was then asked if Dr. Reed lanced the sore that morning, and she replied, "No, I don't think he "did. I don't remember whether he did or not." (124.) On the trial of the detainer case she testified as follows:

"Q. Do you remember a professional visit by Dr. "Reed in connection with that sickness?

"A. Yes, sir.

"Q. What day was that?

"A. That was the same morning, the 14th of Feb- "ruary, and he lanced an ulcer. I remember that, and "how painful it was." (331.)

In March, 1880, she testifies in the detainer suit, when the opium theory had not been thought of, that she remembered Dr. Reed's lancing the ulcer, and how painful it was. In October, 1880, seven months afterward, she testifies in this suit, when she wishes to make out that she was stupefied by opiates, that she didn't think Dr. Reed lanced the ulcer that morning. And then adds, as if she had some glimmering that she had made a mess of it, "I don't remember whether he did or not." It seems to me impossible to reconcile those statements with any disposition or any attempt to tell the truth. In view of these facts, what reliance can be placed on Mrs. Marshall's statement that her husband requested her that morning to sign a deed of Prairie avenue property?

There is only one theory on which I can accept Mrs. Marshall's statement, that her husband said this was Prairie avenue property, as true. And that is that she did not sign the trust deed in question on the morning of the 14th, but on the evening of the 13th of February. The probabilities are strongly in favour of

this theory. Mr. Marshall himself testifies that he took the deed, which was dated February 13th, home with him the evening of the 13th. (Ad. Tr. 7 and 8.)

What is more natural than that he should have asked his wife to sign the deed that evening? This supposition is strengthened by the testimony of Mr. Shortall, the notary, that he remembers on one occasion going to the house and taking Mrs. Marshall's acknowledgment after six o'clock in the evening. (284.) It is true that for the purposes of this trial we do not contest her claim that this deed was not acknowledged, or was not properly acknowledged by her. We admit her claim to a homestead, and ask that it may be set off to her. Mr. Shortall's testimony shows that on one occasion, if not on this, Mrs. Marshall did sign a deed in the evening; and that strengthens the presumption that this deed may also have been signed in the evening. It will be observed that Mrs. Boyer testifies that the deed she saw appellant sign was soiled on the outside (191). This could not have been the case with the Baird trust deed.

Now, if this theory be correct, it may be true that on the morning of the 14th Mr. Marshall did ask his wife to sign a paper relating to Prairie avenue property. Mrs. Marshall testifies that they owned three lots on Prairie avenue (93); and Mr. Marshall, in a letter to Baird & Bradley, in June, 1877, referred to a mortgage on his Prairie avenue property, and he was then apparently trying to have the Paxton loan transferred to that property. (365.) It is true Mr. Marshall says his wife signed the trust deed in question on the morning of the 14th, but his testimony stands alone. The other witnesses can only swear that Mrs. Marshall signed a

paper on that morning, but none of them knew its contents. Now, if Mrs. Marshall has succeeded in convincing the court that Mr. Marshall by that transaction, not only obtained appellee's money by false pretenses, but also attempted to defraud her of her homestead, we cannot expect much credence will be given to his unsupported testimony. Mrs. Marshall probably did not consider what a monument of infamy she was erecting to the memory of her husband, but she cannot prove him a scamp, and then ask the court to believe him.

IV.

EXTENDING TIME OF PAYMENT.

The last defense set up by appellant in her answer is that appellee extended the time of payment of the debt secured by the trust deed, and so the land was released.

There is no proof in support of this allegation. On the contrary it is distinctly proved that there never was an agreement for extension. Mr. Bradley testifies that no time was given Marshall other than merely letting the matter run along without the commencement of proceedings. (437.)

This defense is abandoned by appellant's counsel in the argument.

The counsel for the appellant sets up the extraordinary theory that James M. Marshall, in procuring the deed from the trustee, and his sister and sister-in-law to his wife in May, 1861, did so for the purpose of raising money on this property for his in-

dividual use, and so of defrauding his wife of her interest therein. It is a little hard that the counsel for the appellee should be obliged to defend the memory of this man against the attack of his wife and his wife's counsel. But a regard for truth and justice compels us to say that he was not so bad a man as they would make him out. The facts in the case were simply these: When this deed to his wife of May 18, 1861, was made there was a mortgage of $3,800 on the property to Carter Harrison for the purchase money, which was more than the property was worth. (298, 469.) So that nothing of value was conveyed to Mrs. Marshall by the antenuptial deed. All the value the property ever possessed was what he put into it after the legal title became vested in his wife. He paid off the Harrison mortgage; erected a house on the land, by borrowing money therefor, which was secured by the mortgage of 1863 to Ives, and paid for taxes, insurance and repairs until, in the hard times of 1877, he was unable to pay any more. The amount of debt finally resting on the property was not more than he had expended on it.

The deed of 1861 was made under the advice of a firm of prominent lawyers, who evidently supposed that because no children had been born at that time, the deed of 1861 would convey to Mrs. Marshall the property for life, with remainder to her husband. (407.) It seems that the lawyer who examined the title for Baird & Bradley in 1863, when the Ives loan was effected, made a similar mistake. (396.) This mistake was not discovered till Marshall undertook in 1877 to make a new loan to pay off the loan of 1872. (406.)

Up to this time Mr. Marshall apparently had a fair

reputation for truthfulness and honesty. But poverty destroyed his manhood. When he discovered that, by the mistake of the lawyers, the deed of 1872 only conveyed Mrs. Marshall's estate for life, he was tempted to go one step further, and save the homestead for her by setting up the defense that she had not acknowledged the deed of 1872. His dishonesty was not in attempting to defraud his wife, but in attempting to save something for her from the wreck of his fortunes at the expense of Mr. Paxton. Whether, had he lived, he would have taken another downward step, and aided his wife in making out the defense which she has set up, is a matter purely of conjecture. He is perhaps entitled to the benefit of the doubt.

We therefore respectfully submit that Judge Drummond was correct in his finding of the fact that the deed of 1872 was duly executed, though not acknowledged, by Mrs. Marshall; and that he was also correct in holding, as a matter of law, that either under the act of 1869, or the provisions of the antenuptial deed, Mrs. Marshall had the power, by joining with her husband, to make a conveyance of her life estate.

L. H. BOUTELL,
Of Counsel.

124-55

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1887.

IN EQUITY.

SUSAN C. KNIGHT (FORMERLY SUSAN C. MARSHALL),
Appellant,
vs.
JAMES W. PAXTON,
Appellee.

Appeal from the Circuit Court for the Northern District of Illinois.

BRIEF FOR APPELLANT IN REPLY.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1887.

IN EQUITY.

SUSAN C. KNIGHT, FORMERLY MARSHALL, *Appellant,*
vs.
JAMES W. PAXTON, *Appellee.*

Appeal from the Circuit Court for the Northern District of Illinois.

REPLY BRIEF FOR APPELLANT.

MAY IT PLEASE THE COURT:

I.

Appellant (Brief, 48,) denied the delivery and acceptance of the deed from Thomas E. Marshall, the trustee, and others, to Susan C. Marshall, May 18, 1861. This was the paper set up in the answer of appellee to the cross-bill (Rec., 52) as a discharge of appellant's antenuptial deed.

Appellant (see pages 28 to 47 of her brief) sustained her side of that important issue by her own and the evidence of three other competent witnesses, comprising all four of the parties to the supposed discharging deed.

The testimony of these four witnesses makes it clear that there was no delivery of the discharging deed to any one save James M. Marshall, who wrote it, recorded it, and ever after retained its exclusive custody.

In view of what these four witnesses have stated it appears to us a very inadequate and objectionable mode of treating this important issue when appellee remarks (Brief, 6) that "appellant's statement is not sufficient to "overcome the presumption of delivery."

As we know by the testimony of these witnesses exactly what took place concerning the subject, we are not dependent upon presumptions. The question of an actual delivery to appellant of the "discharging deed" is settled in the negative by the evidence alluded to; and so the issue raised by appellee appears to us now to rest upon mere matter of law arising upon undisputed facts. The antenuptial deed is one; the taking and record of the discharging deed by the husband is another of these facts; so is the lack of actual authority from appellant.

To sustain this branch of the contention appellee (Brief, 7) argues that the discharging deed prepared by the husband in order to destroy the wife's antenuptial trust "was clearly for appellant's benefit"; that "its de-"livery to the husband was doubtless to him as her "agent"; that the husband's "relation to her and the "property was such that an acceptance may fairly be "be presumed," etc., etc.

There being no evidence of actual consent or knowledge on the part of the alleged grantee it is in the above language tacitly confessed that delivery rests upon the supposed authority of the husband to act as his wife's agent in effecting her financial ruin. Counsel's assertion that

such agency of the husband may be fairly presumed in a court of justice, strikes us as a novel and ill-considered one.

There are cases (the shadows of which have flitted across the appellee's argument) where a husband, a father, a guardian or even a recorder of deeds, has been treated in law as an agent to take delivery. But those cases present no substantial analogy to the one at bar. In such instances the presumption arises from the certainty of benefit by delivery and the certainty of entire lack of benefit by non-delivery. The reason has no force where the question is one of modifying an existing interest; that is essentially a question of exchange having no other ethical basis than actual consent on the part of him whose present interest is to be modified by the proposed conveyance.

We have no fear that the court will fail to perceive a distinction that thus reveals the true nature of appellee's argument. The putative grantee of the "discharging "deed" already possessed valuable interests in the subject-matter. These antecedent interests had been vested in a trustee by the husband himself for the very purpose of exclusion of that husband and his creditors from the use or disposition of the land or any influence over its use or disposition. Among other legal results that are said to have flowed from the act of the husband in accepting the discharging deed, "as agent," appellee is careful to point out the bringing of the trust interests of the wife within the capacity clauses of the statute of 1869. He, therefore, relies upon that statute as the basis of the Baird trust deed. (Brief, 11.) But the act of 1869 requires joinder of the husband for the disposition of the wife's estate. In other words, it gives an arbitrary veto power

to the husband to prevent a beneficial use by the wife of her own estate. The same veto was given the husband by the law of 1845, which, as we have noted (Appellant's Brief, 55.) required joinder and acknowledgment both, and was in force in 1861, at the time when (as we are now informed by appellee) the husband was acting as his wife's "agent." No such veto upon disposition is to be found in the ante-nuptial deed. The wife and her trustee were there the disposers. We have now reached the exact position of appellee, viz: that the husband can, at any time, authorize himself as his wife's agent to take from her and give to himself an interest in or power over her ante-nuptial trust property; the monstrous proposition that this antenuptial deed was consistent with the assumption by the husband, in the absence and without the knowledge of the beneficiary, his wife, of an agency to destroy her trust powers under it. Is it to be tolerated by a court of equity that the husband, under this facile fiction of agency, can make himself the disposer of these rights of the wife? Yet such is the real nature of appellee's claim, as we understand it.

In return for such a solution of this question of delivery, is the court prepared to surrender those real and practical interests of the wife under this class of trusts?

"It was supposed," says appellee (brief 9), "the con-
"veyance would so far vest the title in appellant, that a
"deed from her and her husband would convey the en-
"tire title." There is no evidence that appellant joined in the supposition. Of course, the husband so supposed. But by his ante-nuptial deed he had agreed to the contrary. The wife had performed the consideration. Binding himself upon that consideration to respect the trust, there was no capacity left in him, without some

new authority in fact, to assume to represent her to receive a deed for the undoing of the trust. The record shows no such new authority.

The more this claim of agency in the husband is examined, the more it becomes evident that appellee would demand for the husband a larger and more absolute dominion over the wife's trust estate than was ever before heard of in this country—the arbitrary discretion to discharge the trust, without her consent or knowledge.

II. III.

THE CASE OF SWIFT *v.* CASTLE, 23 ILL., 209, APPELLANT'S BRIEF, POINTS II AND III, PAGES 53 ET SEQ. THIS AUTHORITY IS SAID BY APPELLEE NOT TO APPLY TO THE PRESENT APPEAL.

In the case now at bar we have an antenuptial deed to a trustee which vests an equitable estate in the wife, gives her its rents and use, and directs the trustee to permit her to exercise leasing powers of disposition during her natural life, and *for her separate use and support*, "so that "*the same shall not be in the power or liable to the debts of* "*her husband.*" It is apparent that the express terms of the trust include both, 1, the *mode* of exercise by the wife of the powers given her; and, 2, the *object* for which the trust estate is to be disposed of. The *mode* is leasing, to be *permitted* by the trustee; the *object* is support of the wife and exclusion of the husband's creditors. (Rec., 466.)

The act of appellant, upheld by the decree of the Circuit court, was the execution by her of the Baird trust deed, which pledged appellant's trust estate for the use

of tne husband's creditors to the exclusion of the wife. We cited the case of *Swift* v. *Castle* to show that such *purpose* being forbidden in the deed, was beyond the power of appellant to accomplish, even though the *mode* by which it was sought to be accomplished was in conformity to the mode prescribed in the deed. The case cited appeared, and upon further consideration still appears, to us to mark the plain distinction between mode and purpose, instruments and results, and also to be conclusive of this appeal.

We therefore confess to a feeling of surprise at finding it stated in appellee's brief (page 12) that "the only "point decided in *Swift* v. *Castle* was that when the trust "deed restricts the parties to a particular *mode* of dispos- "ing of the trust property, no other *mode* will be valid"; that "it has never been decided in this state that when "any particular *mode* of disposing of trust property is "allowed by the trust deed, no other mode can be used, "even though the trust deed contains no words restrict- "ing the parties to that mode."

Swift v. *Castle* holds that the express prescription of a particular mode of disposal or a particular object of disposal in this class of trusts is in law a restriction of all other modes and objects. This restriction being a construction of express language is necessarily an express restriction. Hence we totally disagree with the concluding remark above that the point is undecided in this state. The case of *Swift* v. *Castle* has been cited by our Supreme court nine times, and never with disapprobation, or even hesitancy. Resting upon the inviolability of active trusts by subsequent legislative action (the point discussed in the masterly opinion of our court in the later case of *Carpenter* v. *Browning*, *infra*,)

it stands a permanent and binding authority in our law of real property.

Appellee's counsel does not point out wherein the execution by the trustee and Mrs. Castle of the mortgages in the Castle case deviated from the *mode* appointed in Mrs. Castle's antenuptial deed. As the point is too important for any misunderstanding we desire again to call the attention of the court to the following facts in that case. The mortgages or trust deeds were executed by the trustee the husband and the wife. The third clause of the ante-nuptial deed authorized the trustee, with the approbation of or at the request of the said Emeline Bennett (the wife) expressed in writing, to sell and dispose of the trust estate, etc. There is nothing in the case to indicate that Mrs. Castle or the Supreme court considered her joinder in the mortgages with her husband and trustee was not a sufficient expression "in writing" of her "approbation" of the act of her trustee, had the *purpose* been a lawful one.

The three grounds of relief stated in the bill are found in the report of the case, 23 Ill., page 136. They are: 1. The trust deeds to the husband's creditors were unauthorized by the ante-nuptial deed, "as the sale was "not made for the *purpose* of reinvesting the proceeds in "other property or to deliver the proceeds to the wife." 2. That said deeds were made as an inducement to suppress a criminal prosecution. 3. Undue and improper influences towards complainant. Certainly these claims exclude the idea of objection to the *mode* or form of the deeds of trust, as counsel suggests. The opinion of the court did not discuss the point of form but rested upon the lack of power in any or all the three grantors to apply the trust fund to pay the husband's debts. "By these

"trust deeds for the benefit of Castle's creditors," says the court (23 Ill., 150), "the object of the trust would be "defeated, as it is not done for investment or to reduce "the fund to money to be paid to Mrs. Castle, but it was "to pay her husband's debts. These conveyances pro- "duced no money to be used and applied to the objects "of the settlement, nor was it intended that they should. "This was prohibited by the deed, *as it was not within* "*the objects named*, and all other purposes are expressly "prohibited." The court will note the *express* prohibition.

The suggesstion of counsel (Appellee's Brief, p. 13), if correct in law, that the antenuptial deed in this case did not prohibit anticipation of the income, is fruitless of result unless it can be made to appear that the power of anticipation could be exercised for the purpose of securing the husband's creditors. The fair construction of this leasing power for purposes of a life-long support of the wife, is, we think, that it is to be exercised from time to time, and not by anticipation.

The texts cited by appellee (3 Pomeroy's Equity, §§ 1107, 1108, brief, p. 13), appear upon examination to be based upon authorities of the class which our Supreme court considered in *Swift* v. *Castle* only to reject in favor of the conclusion reached by Chancellor Kent. It is in vain, therefore, to cite them. The learned and acute author (*Ibid*, § 1105) did not, however, fail to give the rule established in Illinois as a state of the "second class." He says: "In the states composing the second class the "courts have widely departed from * * * the En- "glish doctrine. They regard the wife's power over her "separate estate as resulting not from the existence of an "equitable separate estate itself, but from the permissive

" provisions of the instrument creating such estate. They " have accordingly adopted the general rule that a mar- " ried woman has only those powers of disposing or " charging her separate property which are expressly or " by necessary construction conferred upon her in the in- " strument conveying the property or creating the trust, " and that in determining the extent of these powers the " terms of the instrument are to be strictly construed "; citing a multitude of cases, ending with *Swift* v. *Castle*. It is said by Prof. Pomeroy that *Ewing* v. *Smith*, 3 Desaus., 417, is the leading case of this class.

Can it be doubted then, that counsel is in error when he states the ground of the Castle decision as above; and again in error when he seeks to limit the action of our Supreme court?

To demonstrate that the objects named in the ante-nuptial deed in contention in this case were strictly analogous to those of the Castle deed we stated the contents of the ante-nuptial deed with much care at pp. 9 *et seq.*, applt's brief. If the Castle trusts expressly prohibited the use of the trust fund to secure the husband's debts, we submit that the trusts before this court coutain the same express prohibition.

Now, remembering that Mrs. Castle had joined her husband and her trustee in a deed pledging her trust estate to pay her husband's debts, that her joinder in this pledging deed fulfiled all requirements, contained in the settlement, as to *mode*, (because it amounted to " approbation " in writing of the deed of the trustee. See 23 Ill., 211.) let us inquire how our Supreme court could possibly have determined the bill of Mrs. Castle on the grounds assigned above by counsel for appellee, or on any grounds

that did not compel it to pass upon the *purpose* of the disposition? This is not the place to restate the language of the court so fully given in appellant's brief (pages 55, *et seq.*). We have given a portion of it.

Doubtless this court will examine the case with due care in its original form, and judge for itself what was the trouble with the trust deeds to Mr. Castle's creditors therein declared void.

Counsel for appellee (brief, 9) tells us that the decision in *Swift* v. *Castle* "must have been on the ground that "something more than a conveyance was necessary to "make the deed operative." That something, we are told, "was the power to agree to a waiver of the provis- "ions of the trust deed. This, under the law as it then "stood, she could not do; she could merely convey in "the manner provided by the statute of 1845, but she "could enter into no agreement. This decision was "based entirely on the ground of the disability of married "women. Had the *cestui que trust* been *sui juris* no "question could have arisen as to the validity of the "deed, for it is an elementary principle that when all the "parties in interest unite in the conveyance of trust prop- "erty a valid title will pass."

The argument of appellee (brief, 8) is that the Swift-Castle case having been decided under the statute of 1845, which required joinder and acknowledgment, and the statute of 1869 having dispensed with acknowledgment, though still requiring the husband's joinder, the case as an authority is not applicable to the Baird trust deed of 1872.

It is said that "all this" (meaning the act of 1845), "was changed by the law of 1869, which enabled a mar-

" ried woman, *by joining with her husband*, not merely to " convey her land, but to enter into contracts with regard " to it as fully as if she were a *femme sole*." But " all this " was not changed; as to the requirement of joinder, the wife did not become *sui juris*.

There was no legal power under either statute to compel the husband to join.

The statutes of 1845 and 1869 were in *pari materia*. Both related to the real property of married women, and there is no room to say that the capacity to contract under the later statute was a capacity to *contract to convey* anything other or larger than the wife had capacity to *convey* by deed *in presenti* under the forms of the act of 1845. The same facts which make against the capacity of the husband to act as his wife's agent in breaking down the antenuptial trust are convincing on the point now under discussion. Why should the legislature have intended, by the act of 1869, more than by the act of 1845, an offer, or why should either statute be construed as an offer to the wife of something less than what she already possessed under her antenuptial deed? As she had already power by that deed to dispose of her trust estate without asking her husband's consent, and full control over her trustee to compel his action, if needed, and as needed, what is given her by this much relied upon statute of 1869? A privilege of conveyance under a statute that left them under the yoke of marital discretion, although a boon to those wives who held land in their own names, subject to the common law incidents, was not a privilege to her whose interests were held by a trustee under active trusts of the class under examination.

These trusts being active were not only excluded from the legislative intent, but were beyond legislative power.

If it was forbidden to the wife to convey, it was equally forbidden to her to agree to convey the trust estate held by her trustee. It satisfies all language of the acts of 1845 and 1869 to refer them to property unaffected by active trusts like that under discussion.

As in England it was soon judicially determined that active trusts were not executed by the statute of uses, so has it been determined in our state that statutes giving capacity to wives to convey or contract their lands do not oust the trustee of such a trust, and execute the use.

Breit v. *Yeaton*, 101 Ill., 242, cited in appellant's brief, page 66, is such a case. Another is *Carpenter* v. *Browning*, 98 Ill., 282. Both these refer to the act of 1861—the married women's act—and both deal with pre-existing trusts of an active nature.

In *Carpenter* v. *Browning*, our Supreme court, by MULKEY, Justice, says of the married women's act of 1861—the same shown at page 61 of appellant's brief: "The real question, therefore, in the case is whether the "act of 1861, enlarging the property rights of married "women, has had the effect of fully satisfying the objects "and purposes of the trust so as to warrant a court of "equity in decreeing a conveyance of the estate to Mrs. "Browning. We confess we are unable to discover upon "what principle the statute in question could have such "an effect. It was not the intention of the legislature, as "this court has in effect often held, in passing the married "women's act to at all disturb or affect in any manner "existing property rights; *nor was it within its power to* "*do so.* The property in question, long before the pas-"sage of this act, was placed entirely beyond the hus-"band's control as was evidently intended by the testator,

" and to a large extent was placed beyond the control of " Mrs. Browning herself, and in a modified degree this " condition of affairs exists at the present time. * * * " And to grant the relief sought by the bill, under such " circumstances, would, in our judgment, be to defeat the " objects and purposes of the testator in making his will. " This we are not prepared to do. We are clearly of " opinion that the trust still exists, and that it has not, by " reason of any subsequent events, become what is " known to the case as a dry trust or executed use."

In arguing that the husband and wife, under the forms of the act of 1869, had power to convey the interests of appellant there is no other course for appellee than to attempt the no thoroughfare indicated by Justice Mulkey above. It is obvious that if the legal title of the trustee is to be ignored it can be upon no other ground than that condemned by our court in the case just cited, *i. e.* divestiture of the trustee by subsequent legislation. Thomas E. Marshall stands in this case seized of the legal title claimed by appellee, unless it has been demonstrated that the statute of 1869 or some other agency has intervened to divest his title and vest it in the wife.

IV.

We desire to say something in reply to what has been remarked by counsel upon the subject of appellant's MENTAL AND PHYSICAL CONDITION and THE NATURE OF THE REPRESENTATIONS inducing her to sign the deed to Mr. Baird—execute it, as counsel expresses it. To our mind the evidence is important upon a point argued, appellant's brief, 72, viz.: The question of appellee's re-

sponsibility for the acts of the husband the notary, and appellee. Appellee's present attitude, appears to be to cast the responsibility upon the wife for not doubting her husband's word, and demanding a reading of the deed at the time she signed it.

Cases are cited (*Martin* v. *Brittenham*, 70 Ill., 617; *Spurgin* v. *Traub*, 65 Ill., 170, and *McHenry* v. *Day*, 13 Iowa, 445) to lend authority to the estoppel supposed to result from the act of appellant in returning the deed with her signature to her husband.

These are cases where the wife, after executing the deed appeared before the notary or magistrate, and publicly acknowledged that she *had executed* the deed, and where it was the officer's duty to take and reduce to writing her solemn declaration to that effect. Even the Iowa case (13 Iowa, 445) was placed on the ground of acknowledgment before the notary. But appellant has made no notarial or other acknowledgment of an executed deed. The sole point of contact between her and this Baird trust deed was the casual and momentary signing of her name, and returning the paper to her husband. This was a matter of private confidence between them. The dealing had been a blank to her up to that instant; it remained a blank ever after. She had not had and was never given her day in court before one of those notaries, now so numerous, whose hurried and mercenary certificates have so often been likened unto judicial determinations in the nature of fines and recoveries.

As she had not "estopped" herself by acknowledgment before a *quasi* judicial body it was deemed important that the state of her health and all other circumstances should appear. The question is, how negligent was she and how far responsible to appellee for such negligence, and how

far responsible is appellee. There is no claim that appellant was totally insane or "demented" from narcotics but the evidence shows that she was in pain and distress from illness, and was also to a considerable extent during the day in question, February 14, 1872, under the influence of opiates and similar drugs. That it is as counsel thinks, "of the utmost importance to know how "much opium had been taken," we deny. We do not purpose to repeat in detail the evidence so fully gone into in our brief. It can be summed up as proving that appellant was a very sick woman too much oppressed with pain and the effect of drugs to be capable of the vigilance which the appellee now claims she should have manifested towards her husband. We submit that the vigilance which the courts lay down as due from a healthy person who makes a public acknowledgment before a magistrate is one thing, that which the wife under the circumstances of this case is called on to exercise, is quite another. The former relates to a public act publicly recorded. The latter is a private and domestic confidence where trust in the husband's word is natural and proper.

We insist that in the latter class of cases may properly be followed the rule of responsibility, announced by the Maryland court in the case cited in appellants brief, page 50, *Bank* v. *Copeland*, 18 Md., 305. It imperils no man's title unjustly to hold him responsible for the methods employed by his own agent.

The alarming consequences to the common assurances of the realm which are so feelingly described by counsel can all be prevented by employing notaries who will proceed regularly and loan agents who will accord to a married woman, whose land is offered as security for an-

other's debt, without her consent, an opportunity for consultation.

But *Spurgin* v. *Traub* is not an authority to show that misrepresentation by the husband as to the nature of the the deed would in *no case* be a valid reason for relief against the deed of the wife. The case turned upon lack of proof of the misrepresentation, the court in holding the proof insufficient, remarking, "even were the proof of the "misrepresentation undoubted and were there no evidence "of the lack of diligence in obtaining knowledge of the "contents of the mortgage, *we should have hesitated long* "before relieving against and annulling it in such case."

As to this branch of the case, counsel states: "Of the "five adult persons who were present when the Baird "trust deed was signed, Mrs. Marshall and her sister, "Mrs. Noble, are the only persons who say that Mr. "Marshall stated to his wife that this paper related to "Prairie avenue property." It is pertinent to inquire what witness, adult or otherwise, contradicts these two witnesses? Not one, nor was there any acknowledgment to impeach them. It is proper then to treat the fact as proved upon their evidence. In reality, however, Dr. Noble's testimony is cumulative, and appellant was justified in so treating it. He says (Appellant's Brief, 86, 87; Rec., 193), that appellant exclaimed on signing the paper, "there was one piece of property she "could not sign a deed for." This expression, used in the very house supposed by her to be placed beyond her control can have but one meaning.

It is remarked by counsel for appellee that the appellant's husband was not asked at the taking of his deathbed deposition as to the representations made by him to

his wife. True, but within a few hours—a day or two—appellant stated the misrepresentation to the jury on the trial of the suit at law. This is apparent at page 329 of the record, which gives appellant's testimony in the lawsuit, as recited by Mr. Brown, the reporter.

On the cross-examination in the suit at law (Rec., 333), appellant again stated the representation as to the Prairie avenue property. This was March 16, 1880, several months before the death of her husband.

It is said, also (Appellee's Brief, 6), that the opium theory had not been thought of when she testified in 1880; and statements of appellant as to her mental and physical condition were naturally "a great surprise to appellee, "etc. * * * Her defense then was that she had not "acknowledged the deed; now, when we bring a chan-"cery suit for the purpose of overcoming that difficulty, "she sets up an entirely new defense." This is calculated to make it appear that appellant was in some way departing from her former statement. In the lawsuit (Rec., 329) appellant stated that she said to her husband she was so sick she could not sign any paper—she was so sick and under the influence of *medicine*. Just above she is testifying in the detainer suit (329): "I was sick in bed at "the time. I had always been in the habit of directing "valentines, and that day I couldn't do it. I was very "sick, and suffering a great deal of pain." * * * At page 335, Mr. Brown is required by appellee's counsel to bring in the rest of his notes of appellant's testimony in the suit at law. He does so at pages 438 to 454, record. This, although styled by the clerk, in making up the record, "Deposition of Mrs. J. M. Marshall," is shown by internal evidence to be the paper Mr. Brown

had promised to bring in—a fuller copy of his notes of appellant's former testimony.

Therefore, we see that on the trial of the suit at law appellant gave evidence that she was sick in bed; in great pain and under the influence of medicine. Now, as opiates are medicines, we do not understand how appellee can have been surprised, or how he can say it is an entirely new defense to specify the medicines above referred to.

These notes of appellant's former evidence were put into this record by her counsel because appellee's counsel (Rec. 130) had cross-examined her in this case as to her having said "*nothing about morphine*" on the law trial. In order to show that the surprise and new version theory of appellee rested upon the proposition that morphine and other opiates were not medicine, we were led to add another to the many burdens of this record, by giving, with accuracy, what appellant actually did say to the jury about her illness. This, we respectfully suggest, was the point at which appellee might conveniently and economically have begun. We suggest also that appellant's present testimony as to her illness, and its circumstances fairly taken as it is meant, and as a whole, is not at material variance with her evidence on the former trial.

Then where is the justice, not to say charity, of denouncing appellant's testimony in the harsh terms employed by counsel for defendant? (Brief, 25.) When professed alienists reach precision and uniformity in the use of terms descriptive of mental conditions, it will be quite time for counsel to berate appellant for her *bona fide* if awkward attempt to describe the state of her mind in her illness.

On the main question of power, appellee has sought

refuge in the "English doctrine." Appellant again appeals to the law of the place as enforced by the courts of Illinois. It is needless to cite further authority. We are but repeating the words of this court, used long since and followed in *Ins. Co.* v. *Brine*, 96 U. S., 636, when we say: It is a principle too firmly established to admit of dispute at this day, that to the law of the state in which land is situated must we look for the rules which govern its descent, alienation and transfer, and for the effect and construction of conveyances.

Upon the whole case appellant respectfully submits that the reasons adduced by her for the reversal of the decree have not been answered.

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